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HAITIAN REFUGEES

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U.S. POLICY TOWARD HAITIAN REFUGEES

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JOINT HEARING AND MARKUP

BEFORE THE

SUBCOMMITTEES ON

WESTERN HEMISPHERE AFFAIRS

AND

INTERNATIONAL OPERATIONS

OF THE

COMMITTEE ON FOREIGN AFFAIRS

HOUSE OF REPRESENTATIVES

ONE HUNDRED SECOND CONGRESS

SECOND SESSION

ON

H.R. 5360

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U.S. POLICY TOWARD HAITIAN REFUGEES

THURSDAY, JUNE 11, 1992

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
SUBCOMMITTEE ON INTERNATIONAL OPERATIONS,
Washington, DC.

The subcommittee met, pursuant to call, at 1:00 p.m. in room 2172, Rayburn House Office Building, Hon. Howard L. Berman (chairman of the subcommittee) presiding.

Mr. BERMAN. I want to thank you all for coming to this joint hearing on the Subcommittees on International Operations and Western Hemisphere Affairs.

Because we have a lengthy panel—a number of our colleagues wish to testify—I am simply going to include my opening statement in the record of the hearing. I might point out it has a slightly negative view of present and recent administration actions on the whole question of our Haitian refugee policy.

[The prepared statement of Mr. Berman follows:]

PREPARED STATEMENT OF HON. HOWARD L. BERMAN, CHAIRMAN, SUBCOMMITTEE ON INTERNATIONAL OPERATIONS

Today's hearing on U.S. policy toward Haitian refugees is being held to review what many in Congress regard as an increasing series of callous, inhumane and illegal actions by the administration toward those fleeing Haiti.

This present crisis began last September when, in the wake of the military overthrow of the elected government in Haiti, and the brutal repression that followed, thousands of refugees began to flee Haiti. It has been abundantly clear that a significant portion of those abandoning their homes and families to flee Haiti are likely doing so because of a very real fear of persecution and oppression.

Since that illegal takeover, there have been many credible reports of mass killings, selected assassinations, disappearances, political arrests and severe beatings. Amnesty International has reported 14 political killings in just the last 2 weeks.

I recognize that the coup in Haiti, the impact of the subsequent embargo and the outflow of thousands of Haitians refugees presents all of us with some very difficult and complex problems to which there are no easy answers or solutions. The refugees are a symptom of a much deeper, more intractable series of problems and I recognize that addressing those problems is key to finding a long-term solution.

However, ever since the mass exodus began, the administration has done everything that it can to impede a fair and nonprejudicial screening process to ascertain which of these Haitians might have credible claims to asylum. Those seeking to establish those claims have found themselves victims of a sometimes arbitrary process that affords them no right to independent review. Thousands of others, determined under this system not to have a credible basis for asserting that they are political refugees, have been returned with vague assurances that the U.S. feels that their safety can be protected. However, the United Nations High Commission for Refugees has stated categorically that it "is not in a position to monitor the safety of those being returned to Haiti."

Three weeks ago the administration announced that it would now be the policy of the United States to intercept boats carrying Haitian refugees and send the refu-

gees on board back to Haiti without any attempt at all to find out why they might be fleeing.

This policy clearly contravenes U.S. Treaty obligations and is a violation of every standard of human decency to which the civilized world adheres.

I am also deeply concerned at the message that we send to the rest of the world. How can we criticize the Government of Hong Kong for returning asylum seekers to Vietnam? At least that government has made some attempt to screen those individuals who have a well-founded fear of persecution. By contrast, the United States is intercepting Haitians on the high seas and summarily returning them to an illegal military regime. Not long ago, we joined the international community in condemning the Malaysian Government for pushing boat people back to sea. Could we do so now with this new U.S. policy?

If there is anteing to the notion of a New World Order then surely, with the United States as the sole remaining superpower, it begins with our country's demonstrating the kind of moral leadership that we hope that others might emulate.

I can think of only one precedent for our current policy. Fifty years ago, our government refused to let the *St. Louis* dock in Florida. Hundreds of Jewish refugees who were fleeing Nazi occupied Europe were forced back to face Hitler's death camps where many of those aboard the *St. Louis* ultimately perished. It was one of the darker episodes of our history and certainly not an event that any of us ever thought that we might see repeated.

As we review the current refugee policy toward fleeing Haitians, we should not lose sight of the fact that our ultimate goal is the restoration of democracy to Haiti. Until that occurs, we will continue to have a duty and an obligation to ensure that refugees fleeing that troubled land are provided, at least, the minimum protections under international and U.S. law.

Mr. BERMAN. If any of my colleagues wish to make any statements, I encourage them to at this time.

Mr. BERMAN. Mr. Lagomarsino?

Mr. LAGOMARSINO. Very briefly. Mr. Chairman, the ongoing crisis in Haiti has remained a cause for serious concern among all of us who are anxious to see democracy restored.

We have been alarmed at the exodus of boat people from Haiti who are risking their lives in less-than-seaworthy vessels. As a result, it becomes a question of whether the Haitians are more in danger in Haiti or in their efforts to escape.

While it was recognized that the United States has traditionally carried out a policy of offering asylum for those being persecuted and those in danger of their lives, it is not entirely clear that the refugees from Haiti are leaving just for political asylum. They often state their purpose for fleeing is to escape poverty and unemployment in their country. Certainly understandable. Those with a legitimate concern for their safety are eligible for asylum in the United States.

The administration has been trying to carry out a two-pronged policy. One, restore democratic government to Haiti with the cooperation of OAS allies; and, two, be sure that the Haitian people are not further endangered by political persecution or economic deprivation.

In the long struggle since the military coup last September, we haven't been too successful in either goal. The frustration we have all felt with the lack of progress continues to build, and is, I understand, the motivation for this hearing and for the legislative proposals that are being introduced in this House and in the other body.

So, Mr. Chairman, I welcome our witnesses on the various panels before us today and I look forward to hearing their testimony.

Thank you.

Mr. BERMAN. Thank you very much.

Mr. Payne.

Mr. PAYNE. Thank you very much, Mr. Chairman. I will make a very brief statement. Thank you, Mr. Chairman.

As a member of the Subcommittee on Africa and a Member of the Congressional Black Caucus, I very much appreciate the opportunity to make an opening statement.

I feel it is important to point out the implications of the inhumanity expressed by the Bush administration toward the people of Haiti. It is a time when the images of the injustice of the Rodney King case and the ensuing violence in Los Angeles are still in the minds and hearts of many Americans, in particular Americans of African descent. For the Bush administration to violate the accepted agreements by preventing access to first asylum protection for the Haitian refugees is in the poorest taste and demonstrates a complete lack of sensitivity to the problems of urban Americans.

From the point of view of African countries, both the Rodney King case and the treatment of Haitian refugees have undermined the democratization program that was just beginning to gain momentum in Third World countries. Even in Cuba, our policies are resented.

People in African countries will never forget the effect of health services provided by Cuba, nor will the ANC forget the early support by Cuba in their struggle against apartheid when the administration supported the apartheid Government of South Africa. These are facts we must be sensitive to as we formulate policies and move into the 21st Century.

The administration, by resorting again to big-stick diplomacy rather than dialog, has not provided a democratic example to other countries. Certainly we do not want to default to go to military intervention, because we do not feel that is the way to solve the problem in Haiti.

But, in conclusion, when the United States itself refuses to assist refugees fleeing from an undemocratic Haiti, how do they expect other Caribbean countries to open their doors? When the United States undercuts the embargo on Haiti by favoring our own business interest, how do we expect European countries to honor the OAS embargo?

I hope we can break through the program of disinformation being promoted by our own government with regard to the Haitian refugees. I hope we can understand that the humanitarian aspect of this equation is not a technicality, but is directly related to the solution. And, in so doing we can arrive at some solutions that will earn the respect and cooperation of the rest of the world, and most certainly not encourage further disorder in our own country and hemisphere.

Thank you very much, Mr. Chairman.

Mr. BERMAN. Thank you, Mr. Payne.

Mr. Goss.

Mr. Goss. Thank you, Mr. Chairman. I want to thank you for the timeliness of this meeting and this testimony.

I have concerns on many points. I will submit them for the record, but I will briefly outline them. First is the diversion, which we can ill afford at this time, of our Coast Guard assets to the type

of activity they have been pressed into. Frankly they are not suited to be in the residential shipping business, which is what this has gotten to be, taking large crowds of people and putting them on their cutters, diverting the cutter from its function. I sit on that subcommittee in the Congress, and considering all the other missions the Coast Guard has, I am very worried about that.

Secondly, as representative from the State of Florida, I would like to point out that Florida is doing a whole lot more than its share relative to the rest of the Nation in dealing with this particular problem and has now for many years—and sad to say, Florida, as committed to doing it as it is, has a detention center which makes Guantanamo look like a good bargain in comparison. Florida is also being assessed a disproportionate share of the cost in pure dollars, as opposed to the social pressures involved in this.

Third, these are minor issues compared to this, is human suffering. There is no question that human suffering in Haiti has gone on far, far too long. In fact, it predates the United States in America. Haiti is the oldest democracy in the hemisphere and it has had trouble since day one, I guess.

I remember very well the days of Papa Doc, and I guess it is a tough call to say whether things are better or worse in Haiti right now than they were under Papa Doc. It depends on your perspective.

I will say this. I think there is a solution, and I am glad we are having this discussion today and this testimony. My personal feelings are that a safe haven program on Haitian soil with President Aristide returned, in short, by a multiflag effort will work, and I hope this government is going to go in that direction.

Thank you, Mr. Chairman.

Mr. BERMAN. Thank you, Mr. Goss.

And now to our first panel, a group of distinguished colleagues, each of whom has been very active on refugee issues generally and on Haiti specifically. Our first witness is our colleague from the Foreign Affairs Committee, Mr. Solarz.

STATEMENT OF HON. STEPHEN J. SOLARZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. SOLARZ. Thank you very much, Mr. Chairman.

I want to pay tribute to you at the outset for your willingness to hold this hearing in a timely fashion. I think it is a measure of your commitment to the fundamental values upon which this great Nation of ours was founded over two centuries ago.

I have a prepared statement, but I hope it can be included in the record, and I will try to summarize as briefly as possible my thoughts on this matter.

Mr. BERMAN. All the statements will be included in the record, and obviously summarization would be greatly appreciated.

Mr. SOLARZ. Thank you, Mr. Chairman.

The presentation of these two pictures over here has been arranged by some of the refugee advocates who share my concern over this extraordinary and egregious decision by the administration to send back all of the Haitian boat people to Haiti without first determining at the very least whether they have a legitimate

claim to refugee status. These photographs demonstrate, if nothing else, the truth of the philosopher Santayana's observation that "those who do not study the past are condemned to repeat it."

The first picture, the one closest to the benches over there, was taken 53 years ago this week. It is the refugee ship *St. Louis*, which we refused permission to enter the United States to discharge its human cargo of almost a thousand Jewish refugees fleeing the tyranny of Nazi Germany.

As a result of that decision, Mr. Chairman, the people on this ship, part of a voyage of the damned, were sent back to Europe where many of them ultimately lost their lives in the gas chambers and on the killing fields of Nazi-occupied Europe.

It was to a significant extent because of that experience, and others like it after the Second World War, that the international community agreed upon an international convention for the protection of refugees, the heart and soul of which was a commitment by the countries that signed that convention not to return individuals with a well-founded fear of persecution for racial, religious or political reasons to the country from which they were fleeing.

And yet the second picture, which was taken several days ago, of newly arrived Haitian refugees on the railing of the Coast Guard cutter *Mohawk*, watching their countrymen board another cutter for deportation back to Haiti, demonstrates that we not only haven't learned the lessons of the *St. Louis*, but are acting in what I consider to be blatant violation of our obligations under international law.

Mr. Chairman, you will hear testimony during the course of today's hearings, I am sure, from the Department of State, that what we are doing does not constitute a violation of international law. Leave aside the fact that the UNHCR, disagrees with the administration's interpretation that the obligations of the Refugee Convention do not apply to the actions of American nationals operating for the U.S. Government outside our territorial waters. What I want to say to you is that this is not primarily a legal issue, but a political and moral issue.

And I also want to say to you that in the almost two decades that I have been privileged to serve in this House, I cannot remember another foreign policy decision which I consider to be more disgraceful or dishonorable in terms of the fundamental values upon which this country was founded.

The decision I am talking about, of the administration late last month to have our Coast Guard intercept Haitian boat people on the high seas and send them back to Haiti, is an exercise in diplomatic hypocrisy and moral insensitivity.

Why do I say that? Mr. Chairman, for the better part of the last decade, we have been criticizing countries all over the world for not respecting the principle of first asylum when it comes to providing some refuge for those fleeing from oppression.

This was particularly the case in Asia, where I happen to be fairly familiar with what was going on, given my work as Chairman on the Subcommittee on Asian and Pacific Affairs. In the case of Hong Kong, we repeatedly, ritually denounced our British friends for sending back from Hong Kong to Vietnam Vietnamese boat people, even after Hong Kong authorities had already

screened them and determined that they didn't meet the requirements for refugee status.

It was determined that they were instead economic migrants. Under international law, the British had every right to send them back, and yet the administration opposed these repatriations. And I supported them on this—it was to George Bush's credit; he said, "No, we ask you not to send them back because Vietnam is a repressive society and it wouldn't be right."

Yet, what are we doing now? We are sending back to Haiti not just those who are economic migrants—and I am prepared to concede that many of those people are fleeing Haiti not because they fear repression but because they want a better life in the United States—but also those who undoubtedly would qualify for refugee status.

So in the case of the British, we denounced them for sending back economic migrants, and in our case we are sending back political refugees.

Or take the case of Malaysia. They decided they didn't want any more Vietnamese boat people in Malaysia, so they started to push off the boats to God knows what fate awaited them on the high seas. We said, "No, you can't do that. You at least have to let them land to determine if they are refugees."

But what are we doing? We are not even doing what we asked the Malaysians to do, which was to determine if these people were entitled to refugee status. We are just sending them back.

Well, the administration says, "We have nowhere to put these people. What are we going to do with them? We are running out of space on Guantanamo."

At the same time we are saying that, we are urging, we are cajoling, we are pleading with the Government of Bangladesh, probably the most overcrowded country in the entire world and one of the poorest nations on the globe, to provide a kind of safe haven for a quarter of a million Muslim Burmese who have fled Burma, on the grounds that it would be inhumane and unacceptable to send them back to Burma against their will.

Yet, what are we doing in the case of Haiti? We are sending these people back.

I have no brief for the Communist tyranny in Vietnam. It is a repressive society. But I will tell you this. If you run afoul of the authorities in Vietnam, maybe you get put in a re-education camp, maybe you are denied a job, maybe you are penalized in other ways. You rarely get exterminated. As far as I know, they do not practice torture as a routine. Yet, in the case of Haiti we know that opponents of the regime are tortured, tyrannized, and in many cases murdered. So it is far worse for someone who has a legitimate claim in Haiti than it is for someone from Vietnam. Yet, we tell the British, "don't send them back," yet we will send the Haitians back.

I understand the administration makes the claim, "well, look, it is not really a great hardship for these people because even if we send them back, they can saunter into our embassy in Port-au-Prince and their applications can be processed there." I am not sure, given the conditions which exist in Haiti, how many Haitians have the courage and the fortitude and the nerve to enter in the

light of day the American embassy in Port-au-Prince under the watchful eye of the Ton-Tons Macoutes and other agents of repression of the Government of Haiti, who are undoubtedly noting their names, taking pictures of them, and may retaliate against them later.

But I know there are millions of Haitians living in Port-au-Prince or the countryside who fear for their lives, who don't know they can go into the embassy; and even if they do know it, they have no way of going there, and have no way of being protected between the time somebody in the embassy decides to consider their application and the time they can somehow or other figure out a way to get out of the country.

Personally, I would like to see us have a temporary protected status here in the United States for Haitians until Father Aristide can return to his rightful place as President of Haiti. But I recognize, Mr. Chairman, that there are a lot of people in the United States who don't want these Haitians, whether they are entitled to refugee status or not, to come into the United States. I simply want to say that the legislation which I have introduced, which is being cosponsored by many of the distinguished members of our committee, and which has been introduced by Senators Kennedy and Hatfield in the Senate, does not necessarily obligate us to bring the Haitian boat people to the United States.

What the legislation does is say that under international law we are prohibited from returning refugees to the country from which they are fleeing, and it would prohibit American authorities from doing that.

What would we then do with these people? There are a variety of options. There could be temporary protected status in other countries in the region. Perhaps we could give them perhaps temporary protected status over here. Some have suggested they might be given their screening on the high seas, although that isn't my preferred option. But the point is, there are ways of dealing with it.

Lastly, Mr. Chairman, let me say that the experience we have had at Guantanamo, where I am told that up to a third of those who have been screened so far have been deemed to have a *prima facie* case for refugee status, clearly and strongly suggests that many of the Haitian boat people we are now returning, if they were screened, would be found to have a good *prima facie* claim to refugee status as well.

It is to the glory of this country, it is part of our greatness, that over the course of our history, we have let in refugees from Cuba, Hungary, Poland, Russia, Syria; from countries all over the world. If you are a Cuban and you wash up on the shores of Florida, you are permitted to stay here under law. But if you are a black person from Haiti and you are caught at sea, U.S. authorities become agents of the Haitian military and bring you back.

I hope, Mr. Chairman, that you and the other members of the committee can help to redeem the honor of this Nation by passing this legislation and bringing this despicable practice to an end.

[The prepared statement of Mr. Solarz follows:]

Testimony of Rep. Stephen J. Solarz

On Behalf of H.R. 5360

"The International Refugee Protection Act 1992"
(A bill to reaffirm the obligation of the United States
to refrain from the involuntary return of refugees outside the U.S.)

June 11, 1992

I first want to thank the Chairmen and Ranking Minority members of the Subcommittees on International Operations and Western Hemispheric Affairs for holding this important hearing this afternoon. In his May 24 announcement on Haitian boat people, the President made a policy shift of enormous significance which demands the close congressional scrutiny that this hearing represents.

On this day, fifty-three years ago, in the last weeks of peace before World War II, nearly 1000 German Jewish boat people aboard the ship *St. Louis* were trying to digest the news that they had been denied refuge by U.S. immigration officials. Turned away from the United States, the *St. Louis* returned to Europe, where many of its passengers ultimately died in the gas chambers or on the killing fields of the Third Reich.

The heartless response of the United States and much of the western world to the victims of persecution in Europe in the 1930s was an important factor in the adoption of the United Nations Convention and Protocol Relating to the Status of Refugees, whose cardinal principle is that no person shall be returned to a country where his or her life or freedom would be threatened on account of race, religion, nationality, membership in a particular social group or political opinion.

For years the United States has complied with this basic humanitarian requirement. And

while we have returned tens of thousands of persons seeking asylum in recent years, ■ have done ■ in principle (and ■ ■ matter of law) only after satisfying ourselves that they did not have credible claims to refugee status.

Tragically, the U.S. abandoned that policy late last month, declaring that all Haitians fleeing Haiti by boat will be forcibly returned *without any determination being made as to the risks they might face upon return*. And while the Administration justifies its action by claiming its legal obligation not to return refugees stops at the territorial limits of the U.S., this contention is rejected by an array of legal scholars, as well as by the UN High Commissioner for Refugees.

This extraordinary change of policy has been harshly criticized by refugee, human rights and religious organizations, including SOS (Vietnamese) Boat People, the U.S. Catholic Conference, the NAACP, the American Jewish Committee, the Lawyers Committee for Human Rights, Refugees International, Church World Service, the Lutheran Immigration and Refugee Service, the Organization of Chinese Americans, the National Council of La Raza, Human Rights Watch, and the Union of Councils for Soviet Jews, among others.

Moreover, this shift in policy is not only inhumane, but also undermines U.S. efforts to encourage other governments not to return refugees. The U.S. has, for example, harshly criticized Malaysia for pushing off Vietnamese boat people without giving these beleaguered asylum-seekers the chance to make claims for refugee status, and U.S. officials have even criticized the British for sending back Vietnamese boat people from Hong Kong to Vietnam, even though Hong Kong authorities interview the boat people, return only those judged to be economic migrants, and do not return those deemed to be refugees.

The new U.S. policy announced last month sends a strong signal around the world that a nation need not observe basic humanitarian standards when it is inconvenient to do so.

For this reason, I have introduced legislation to reverse the President's order. The House bill is cosponsored by more than fifteen members, including Reps. Hamilton, Rep. Gilman, Rep.

Lewis of Georgia, Rep. Morella, and Rep. Rangel. A nearly identical bill has been introduced in the Senate, and is sponsored by Sens. Kennedy and Hatfield. Let me say that we have worked closely with our counterparts in the Senate to develop both a bicameral and bipartisan approach on this issue.

Description of the Legislation

The legislation, which is not "Haiti-specific," prevents U.S. officials operating anywhere in the world from returning persons to countries where they would be persecuted.

The first substantive section, a "sense of the Congress" statement, reaffirms that the obligations of the United Nations Convention Relating to the Status of Refugees, as applied by the subsequent Protocol to which the U.S. is a party, have, since entry into force of the Protocol with respect to the United States, applied to actions of the United States with respect to individuals outside the United States.

This interpretation of our obligations is consistent with the opinions of a wide array of legal scholars. More importantly, it is the view of the United Nations High Commissioner for Refugees, under whose framework the Convention and Protocol were adopted and have been implemented for more than forty years. And while the Administration will claim that the U.S. does not now accept this interpretation, we have accepted it in the past. In several documents, including a 1981 Department of Justice opinion, the 1981 U.S.-Haiti interdiction agreement, and INS guidelines for the interdiction program, the U.S. has clearly indicated that in order to meet our international obligations, Haitians interdicted on the high seas must be screened.

While the Administration may claim that it, and it alone, has the right to interpret treaty obligations, I am not aware of any doctrine of law that permits such interpretations to shift with the political winds.

Moreover, the treaty provision in question is hardly ambiguous. In fact, it is elegant in its simplicity. It states that "no contracting state shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be

threatened on account of his race, religion, nationality, membership of a particular social group or political opinion." There is no territorial limitation, either implied or explicit, in this obligation.

Moreover, to read this obligation in any other manner would permit contracting states to frustrate completely the intent of Article 33 by stationing naval forces outside the territory of their own countries to ward off and return any and all asylum seekers.

The second substantive section in the bill would prevent U.S. officials from effecting the return of any refugee to the territorial boundaries of a country where he or she would have a well-founded fear of persecution. It would thus make any return subject to a prior determination, in accordance with fair procedures, including those of the UNHCR, that the individual in question does not have a credible claim to refugee status.

The legislation does not spell out in detail the nature of that determination process, but it would have to meet basic standards of due process that would give the claimant a fair opportunity to make his or her claim. I believe that such a determination should be identical in form and substance, or as nearly so as possible, to those conducted by asylum officers to determine whether asylum should be granted to an applicant already in the United States. Moreover, I note that this standard is not of my own making, but derives from a memorandum from the INS General Counsel regarding well-founded fear interviews for those at Guantanamo, when such interviews were taking place.

The third substantive section of the bill would prevent U.S. officials from frustrating the purpose of this legislation by returning an individual fleeing persecution before such individual had left the territorial waters of his or her country of nationality. Because such a person is still, technically, not outside the territory of his or her country, he or she cannot be defined as a refugee. But if U.S. officials choose to enter the territorial waters of Haiti or any other country, the legislation would prevent them from returning to the land boundary or territorial land of the country any person who would have a well-founded fear of persecution.

The final substantive section of the bill contains limitation provisions that exclude certain individuals from protection under this act, consistent with accepted international law and practice.

I should point out that this legislation is narrowly drawn. It would not require that the U.S. Government provide temporary asylum to those who are fairly deemed not to be refugees. Nor would it require that those with legitimate claims to refugee status be resettled in the U.S. Instead, it offers the Administration the option of seeking other adequate temporary asylum or permanent resettlement options for those with credible refugee claims.

This legislation would, however, bring U.S. practices into conformity with international law by ensuring that no person will be returned to Haiti, or to any other country, if he or she legitimately fears death, imprisonment, torture or other terrible mistreatment due to his or her race, religion, nationality, membership in a particular social group or political opinion.

I expect that you will hear a number of objections to this legislation from the Administration. First, you may be told that the new Haitian refugee policy is working; that boat departures have diminished, and that a greater good has been served because fewer people will be risking their lives by departing Haiti by boat. But when governments in Southeast Asia trotted out these kinds of "deterrence" arguments in the late 1980s and threatened an end to asylum for Vietnamese boat people, the Administration responded by insisting that the right of individuals to be free from persecution could not be sacrificed to any vague notion of "a greater good." As a result, the Administration pushed for, and obtained, a region-wide Comprehensive Plan of Action in which all Vietnamese asylum-seekers are screened by governments in the region. And while boat departures continued at high numbers for a time after implementation of the CPA in 1989, they are now down to barely a trickle.

You may also be told that there is no more space in Guantanamo, and that there is simply no place to house asylum-seekers, especially in view of the seasonal rains. But these problems

pale in comparison to those of other countries providing asylum to refugees. Bangladesh, for example, is one of the poorest and most densely populated countries in the world. Yet we have strongly urged the Government there not to return into the clutches of the Burmese regime any of the more than 250,000 Burmese refugees who have streamed into Bangladesh. Similarly, Hong Kong, a territory of about 400 square miles, has had an average refugee camp population of more than 50,000 in recent years, nearly one percent of the entire population of the island. Despite these space constraints, we have correctly asserted that the right of individuals to be free from persecution could not, under any circumstances, be sacrificed, despite Hong Kong's space constraints.

In essence, we have argued that the right of refugees not to be returned to countries where they would face persecution is "non-derogable," like the right, for example, to be free from torture. In doing so, we have occupied the high moral ground, and my legislation is designed to keep us there.

Finally, you will be told that in-country refugee determination provides an adequate alternative for those Haitians who legitimately fear persecution.

We have never made such a ludicrous argument with respect to any of the other countries where we have in-country refugee adjudications. In the Soviet Union, Cuba, Vietnam, and Romania, in-country processing has been an alternative option for those with the inclination, courage, and gumption to use it. But it has never been the exclusive option, and it is clear that making it the exclusive option does not conform to international law. It only stands to reason that for many of those with valid refugee claims, the U.S. Consulate in the middle of Port-au-Prince is the last place they would care to visit.

Reports from Haiti indicate that there is widespread lack of awareness of the existence of any program at the U.S. Consulate and widespread fears among Haitians that they would be identified by the government forces they are trying to escape if they were to request help. Such forces would have little difficulty tracking them during any processing period, including

the initial visit to the Consulate, and the anticipated weeks, if not months before a decision is made. They also have no assurance that if they are declared refugees, they would be able to come to the United States immediately, or that all who qualify as refugees could be taken at the same time.

In a situation where most Haitians returned are being fingerprinted, it is unreasonable to expect that they would trust a process that requires them to make application and leave the Consulate without firm assurances that they will be kept safely pending any resolution of their case. Thus it is not surprising to hear the State Department report that only about five percent of those who have been returned pursuant to the President's order have made application with the Consulate.

The Administration acknowledges that refugee applicants receive no measure of security from the U.S. government while they remain in Haiti, and this, obviously, is more than a theoretical concern. In fact, according to most respected international human rights groups, respect for human rights in Haiti has deteriorated since the September 30, 1991 coup.

The Administration may claim that there are no reports that any of those who have been returned under the new procedures have been persecuted, but it is far too soon to make judgments in this regard. Moreover, there is nothing like the systematic monitoring that would be necessary to make a sound judgment of persecution of returnees, especially of any returnees who might be afraid to present themselves before the U.S. Consulate, which I am told is within walking distance of a large military facility in Haiti.

The legislation does not dictate alternatives to the current policy, and only states the obligation not to return refugees. But there are alternatives, none of which were presented to Congress prior to the President's announcement. Some of us have urged that the U.S. provide Temporary Protected Status for Haitian asylum-seekers until the democratic government is restored, or at least to permit Haitians to the United States for the period it takes to process

their asylum claims. I personally believe that such action might also compel the Administration to act much more vigorously to expel the current regime and rid ■ of this terrible dilemma.

Many of my colleagues, however, do not support these options, at least not without Administration support. But this does not exhaust the alternatives. The Administration could have expanded facilities at Guantanamo, sought other facilities in the region, and deployed far greater numbers of INS asylum officers both to expedite processing and to enable them to make more considered "pre-screening" decisions.

One respected refugee advocate with whom I have spoken has even called for deploying large ships to temporarily house asylum-seekers. And while this may not seem like ■ realistic proposal, it is precisely what Hong Kong authorities did when they were having difficulty accommodating Vietnamese asylum-seekers. Alternatively, this advocate has suggested that Haitians could be brought to the U.S. for expedited pre-screening.

The Administration could also have made more vigorous efforts, at the most senior levels, to encourage other governments in the region to provide temporary asylum, linked to regional screening and specific time limitations for the asylum-seekers' presence in the countries of asylum. This is, in essence, what we did in Southeast Asia in creating the Comprehensive Plan of Action for Indochinese Refugees. The Administration will claim that there is little interest in this kind of arrangement in the region, but the same argument could have been made with respect to Southeast Asia in 1988. Yet despite the lack of interest in that region, the United States, in cooperation with the UNHCR and other resettlement countries, was ultimately successful in encouraging the countries of the region to sign onto the CPA.

The point here is that we are not without options. What should not be negotiable, however, is our fundamental responsibility not to return refugees.

Mr. BERMAN. Thank you very much. An eloquent statement. It was you who suggested the idea of this hearing—at least the first one to suggest it—and an excellent idea it was.

I think Mr. Rangel had been reserved for the next witness and is here. So, Mr. Rangel.

**STATEMENT OF HON. CHARLES B. RANGEL, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF NEW YORK**

Mr. RANGEL. Mr. Chairman, thank you for this opportunity.

Distinguished members of the committee, I knew sometime in my career I would have to follow the eloquent Mr. Solarz. It hasn't occurred before, but it has caught up with me. It is a beautiful statement. It makes me proud to be a Member of Congress.

When this criminal coup took place and I heard the eloquent statements of my President in talking about being the leader of the New World Order and how in this hemisphere we cannot tolerate these things happening and we insist on the return of democracy and President Aristide, and probably the only tool we did have was an embargo, and since then I have been saddened to see that we never really enforced the embargo. American ships violated it, European friends, indeed members of the Organization of American States. So we found the poorest of the poor suffering and those responsible for the coup eating caviar and dancing and dining in Miami and not even feeling the inconvenience of an embargo.

So we have a situation now that the poor that have been subjected to the persecution by this army, a unique army, they have never really fired a shot at anybody with a gun, they have never really been up against any insurgents, the only criteria to feel the strength of the army is to be poor, is to be unarmed, is to seek democracy, to participate in the election or to be a supporter of Aristide.

I know it is difficult for people in this country to believe that if you are poor and black you cannot be a political refugee, but you can go to Louisiana and look where the people live, you can look at the color of their skin and determine who voted for Duke and who didn't vote for Duke, and certainly you can see in Haiti who supported Aristide and who did not support him.

But in the city where we have the opportunity to share with the entire world the statue of liberty, and coming from a city which my mail always refers to as the gorgeous mosaic, and coming to serve in a Congress where everyone is so proud of the contributions they have made to this country, how could we now tolerate seeing the people who are so anxious to get here that they are willing to risk their lives and their infant children's lives in shark-infested waters to reach this country?

Some might say the law requires that somewhere, somehow we try to find out whether they are political refugees, whether they are economic refugees, and I just wonder, I just wonder, who do we send out on the rickety ships if these ships had come from Europe? How would we tolerate this thing to happen where someone would be checking them off, whether the child would properly identify him or herself without a parent as to whether or not they were

running away from famine or running away from the barrel of a rifle held by one of these criminals?

But then, on top of this atrocity, we found ourselves in the situation where we have the audacity to not only violate international treaty agreements in denying asylum to these people, but while we could not blockade ships that violated the embargo, we can blockade people from leaving their own country, because we have decided ahead of time that they are only coming to this country in order to seek economic refuge.

Let me congratulate Mr. Solarz for at least stating the will of this committee, and I hope Congress and I hope soon our Nation, that we would not be a party to this. We will not disgrace the great reputation and history of the United States by telling people hypocritically that we are there to save their lives by not allowing them to leave the burning infernos that they are unfortunate enough to be born into.

I hope the day will soon come when the President would understand that what we do for Haiti is a signal not only for people in this hemisphere but around the world as to what we stand for.

I am so proud of our religious leaders, both Jewish and Christian, Protestant and Catholic, that we are seeing a moral issue involved here, and they have stood up and supported this bill, and I appreciate the fact that this committee and the chairman are entertaining the support of this bill.

Thank you so much.

Mr. PAYNE [Presiding]. Thank you very much, Mr. Rangel.

I think those two eloquent statements by the two gentlemen from New York really just about says it all.

We will continue on with this. Those who have to vote may vote.

Mr. Oberstar, would you like to give your testimony?

STATEMENT OF HON. JAMES L. OBERSTAR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA

Mr. OBERSTAR. Thank you, Mr. Chairman.

I think the case has been stated very well by my two colleagues who preceded me, and forcefully and eloquently, and with great reason.

I don't have any quarrel with the administration policy with respect to establishment of democracy in Haiti. I have only praise for what the administration did. Going back to 1987 and the attempted first election in Haiti, and their reaction to the fraudulent election that the army foisted upon the country in 1988, tried to establish a government that had no legitimacy, and worked to bring about a free election that actually did occur in December of 1990, I think they were very commendable. I think this administration worked very hard and consistently to support a democratic outcome, the first free election in the nearly 200-year history of Haiti.

Haiti has been a republic since 1804, but it has never had democracy. In December 1990, the overwhelming election of Father Aristide was the first opportunity in this country's history for a real democracy. The democracy that failed was not the fault of this administration either. Everything was done that could be done and

should have been done to support democracy, to support the fledgling Aristide regime.

We should have, the Congress, the administration should have put more money in early to support jobs and to support an economic program. But that the coup that occurred was not this administration's fault. The fault that lies at the foot of this administration is its policy toward the refugees.

I can't even fault the action of imposing an embargo. What was to have been done? What action could we have taken to make it clear to the world community that we would not support a coup, a military overthrow of this democratically elected government? This administration reacted much as the Carter administration did in Afghanistan. It took the action available to it, short of military intervention on our part, which I came to believe would be the only reasonable way to get rid of that army force in Haiti that imposed its will in a brutal way, to reestablish democracy.

But the consequence of the coup and the outflow of tens of thousands of Haitians, and the administration's reaction there, I do find fault and condemn, frankly. If in the 1960's and the 1970's people had left from the Soviet Union in the tens of thousands, we would have sent out cruise ships to welcome them and make them heroes and bring them to the United States. But these were Haitians, in rickety boats, putting years of savings, maybe life savings into hope that they might get to a land of better opportunity for themselves and flee what was becoming an increasingly oppressive government. And we sent them back.

We didn't send back the thousands of Cubans who fled the failed coup attempt of Castro. We welcomed them into this country. These are Haitians and economic refugees. And no doubt a great number of them are.

And if that is the case, then send back the pilgrims, and send back my grandparents, because they had mixed motives in coming to the United States. In Slovenia, the turn of the century, they were under the oppressive hand of the Austro-Hungarian Empire. The young men didn't want to be drafted into the arch duke's army and so they left and came to this country. We didn't send them back. They were recruited for jobs in the United States.

If that is going to be our standard, there is a whole host of thousands, maybe millions of Americans who ought to be returned to their country of origin. We held out the banner, America, the land of hope and opportunity, come to this country. Take down the tablet from the Statue of Liberty, then, because we cannot say, "Send me your poor and your homeless, yearning to be free."

If they weren't political refugees when they left Haiti, they surely become political refugees when they return, because then the army knows, the police know for sure who it was that voted for Father Aristide. Then they become marked. Oh, you don't need fingerprints, you don't need photographs, because in Haiti all you really have is the Telejol.

I lived there 3½ years. I know how people can disappear by a blink of an eye, by a word whispered. We didn't have telephones in the years I lived in Haiti, and you didn't need a telephone to condemn someone, for a person to be disappeared. It was a simple

word passed. To send these people back marks them for destruction, for harassment. And we shouldn't be a part of that.

We have the ability to welcome and make them a part of this country, to harbor them and to give them nourishment, until we can bring about the reestablishment of democracy.

There was no flood, no exodus during the months that Aristide was President. It occurred only after his ouster. Keep that in mind as you move on this legislation, Mr. Chairman.

Thank you.

Mr. PAYNE. Thank you very much. We will adjourn.

Mr. Colorado, might I ask you to take the Chair, and when Mr. Smith returns or Mr. Mazzoli wants to present an opening statement, would you then just simply reconvene? I will go off to vote, and—

Mr. COLORADO. Mr. Chairman, I may be out of there by then, because I have to catch a plane.

Mr. PAYNE. All right. Then we will adjourn for about 7 or 8 minutes.

[Recess.]

Mr. BERMAN [Presiding]. We will resume the hearing on U.S. policy toward Haitian refugees.

I apologize for the rolling nature of all of this, but the votes on the floor require it.

I am led to believe that Mr. Rangel and Mr. Oberstar completed their testimony and we go now to the Honorable Lawrence J. Smith of Florida, who has been very active on this issue, since long before this most recent turn in administration policy.

Mr. Smith.

STATEMENT OF HON. LAWRENCE J. SMITH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. SMITH. Thank you, Mr. Chairman. I appreciate the courtesy in being able to testify before you today and for your scheduling this hearing. I sincerely hope that Congress will act honorably to right the administration's wrong policy of directly returning Haitians who flee their country.

The administration's latest immigration directive on Haiti is election year politics at its worst. A court has ruled that it is morally reprehensible but legally, unfortunately legally and sadly legally defensible under American law. However, it is quite possibly a violation of international law.

But even more importantly than any court rulings, even more importantly than the ramifications of a hypocritical foreign policy, as was documented very well by Mr. Solarz, this policy is clearly unnecessary. This wrong policy can be easily righted, even without, although I support it, even without the implementation of Mr. Solarz' bill.

All the administration needs to do is to send more immigration officials to Guantanamo. This would speed up the processing of asylum claims. If you remember, the basis on which this policy was announced and implemented was that there was no more room at Guantanamo, that all 12,000, approximately, slots, spaces, beds, and capability were used up.

The problem is, all of the people who are there are not permanently there. The administration did not indicate that asylum claim processing, which was currently going on with those at Guantanamo, was very slow, nor did it indicate that all that space was used up.

But those refugees who do not qualify for asylum are being returned to Haiti. And so slots are becoming available, albeit on a slow basis. What we need to do is to send 20 or 30 more INS agents to do the legitimate asylum processing that is being done currently with the Haitians who are currently at Guantanamo. That would speed up the processing. As I indicated, those who did not qualify for asylum would be returned to Haiti as before, but there would be more of them being returned after legitimate processing, which is all anyone has ever asked for—even the Haitians and their representatives have asked for, only a legitimate process for asylum hearing.

If they qualify, they can possibly come here. If they don't qualify, they go back to Haiti. But with more agents, you could make room available for incoming people; those who qualify would be available to apply for asylum in the United States, those who don't would be sent back to Haiti as we are currently doing, making more slots available because there would be more agents processing more people. And over two-thirds of the people who are being processed are in fact determined to be only economic refugees, not eligible for political asylum, and therefore they are being returned.

So with more INS agents, all you would have to do is just keep the slots open as those currently at Guantanamo are being returned, and bring in those you would interdict on the high seas, as we were doing before the May 24 interdiction policy as enunciated, and you would have the availability of the same kind of processing, the same commitment to humanitarian rights, to immigration rights, and to refugee rights as we had before May 24.

The problem with the Bush administration is that the directive threatens the international system to protect refugees that was established after World War II. This is why the U.N. High Commissioner for Refugees sharply reprimanded the administration for its new policy.

With this directive, the United States has proclaimed that it is reversing its historic defense of refugees worldwide. We have overriden our own plea to Great Britain in 1987, as Mr. Solarz indicated, not to repatriate refugees who sought asylum in Hong Kong.

Now, I commend those gentlemen, Mr. Solarz, Mr. Rangel, Mr. Gilman, for introducing legislation to ensure that the United States will not abandon its international commitments to protect refugees, because we don't have to abandon that commitment. Yet, the Bush administration can attain its goals, and that is to prevent overcrowding. This can all be accommodated.

I am rather surprised that the administration, as a matter of fact, issued sort of an end-game directive without going through any of the intermediate steps, including speeding up the processing by adding more INS agents. The administration claims, for some reason, and unbelievably, in my estimation, that a lack of evidence that any repatriates have been persecuted means that none, in

fact, have been persecuted and they can therefore send them back without fear that these people are going to be harmed in any way.

I think we ought to make something very clear. There is no way the administration or anyone else can satisfactorily determine if repatriates are or are not being persecuted in Haiti.

Just talking to a representative from a human rights organization can draw a death sentence for a Haitian citizen, and we have seen that.

You see, Mr. Chairman, a human rights tragedy is under way in Haiti. Since the coup, the Haitian military has been systematically terrorizing the Haitian people. International human rights organizations such as Amnesty International estimate that 1500 Haitians were killed in the months following the coup. Many people believe that is a conservative figure.

Killings, severe beatings, arbitrary mass arrests, and torture continue. Countless other cases go unreported, particularly in the countryside where there are no communications. Mr. Solarz indicated there is no transportation. There is no communications either. There is also no food.

Any member of a grassroots peasant, religious, or lay organization, trade union or student group risks being murdered if he speaks out. Tens of thousands are in hiding, and we wonder why Haitian want to leave their homeland.

Even the slightest support for deposed President Aristide can be lethal, and that is documented. Two weeks ago, a businessman, Georges Izmary, brother of a prominent Aristide supporter, was shot to death by gunmen believed to be linked to the Haitian military. Soldiers later stormed Izmary's funeral, beat mourners, and carted away 10 of them to jail. All documented, all in the newspapers.

Isn't it possible that some of the Haitian boat people are Aristide supporters who face persecution like Mr. Izmary? Isn't it possible that the President of the United States is being wrongly advised that every single one of the thousands of Haitians fleeing their country is leaving for economic reasons?

We know from the asylum hearings that have been conducted during the processing stage at Guantanamo since we have been doing them there, that approximately 30 percent of those being interviewed have been deemed eligible to apply for political asylum in the United States. Therefore, our evidence indicates that of the boats we send back, if that were to hold true, approximately 30 percent of those people should not be sent back.

The security problems, magnified by Haiti's reversion to a police state, which Aristide had worked hard to shut down, have worsened. The Ton-Tons Macoutes were released by the de facto regime and are once again in control. They have been joined by the equally vicious rural sheriffs, many of whom have reclaimed their fiefdoms and are reigning with terror, because in Haiti, unlike many other countries in the region and certainly in Latin America, there is no organized guerrilla force. There are no weapons. These people have nothing—no food, medicines, jobs, no hope. They don't even have the weapons with which to deal with an insurrection against this military junta that has seized their country.

Finally, until the political crisis ends, the immigration crisis not going to subside. In the 8 months of Aristide's presidency, Mr. Chairman, 1700 Haitians attempted to flee Haiti. In the 8 months since the coup, at least 35,000, probably closer to 40,000, have fled. That is 20 or more times the number have fled since the coup than came when Mr. Aristide was in power.

In February, I introduced an amendment, passed by the House, to Mr. Mazzoli's bill, which amendment had the effect, as a Sense of Congress, of asking for a cessation for 180 days for the repatriation of Haitians. The amendment adopted expressed the sense of Congress that the President should ask the U.N. or the OAS or both to dispatch a peacekeeping force to Haiti to provide security, to protect human rights and to protect both random and directed violence.

An international show of resolve with U.N. blue helmets or with OAS peace monitors and peace keepers would compel the tiny Haitian army of 7,000 or less to accept a return to democracy. The first step toward a solution in Haiti thus should be the establishment of an international security force on the island, under the auspices of the U.N. or the OAS.

My understanding is that the State Department currently is talking about that very thing. It was reported last week in The New York Times that in fact the administration is doing something along those lines, and I commend them for that. This, I think, is a first step in the right direction.

There should be a multilateral approach in this hemisphere, under the auspices of the U.N. or at least under the auspices of the OAS, to do something about protecting the Haitians in their own country. We must make the militaries in this hemisphere understand that any attack on a democratic nation's sovereignty, including coups d'etat, will not be tolerated by the Americans.

I believe that Congress, Mr. Chairman, should take a two-pronged approach to solve the Haitian crisis. The Solarz-Rangel-Gilman bill should be complemented by the deployment of an international peace-keeping force to Haiti sponsored by the U.N. and/or OAS which would provide security and protect human rights.

Haiti is ready to explode. The army, however powerful, is divided. Recently, a group of soldiers warned that a political solution to the crisis had to be found soon. The rank and file have not been paid in 2 months. Eleven soldiers have been killed, some of them allegedly by other soldiers.

Haitian society is more polarized than ever. The Haitian people are running out of patience. The embargo is also making us painfully aware that they are running out of food, clothing, medicine, and out of hope.

The embargo is making the poor poorer, the hungry hungrier, and the sick sicker. Meanwhile, our friends in Europe are making sure the Haitian elites don't lose the creature comforts to which they are accustomed.

Mr. Chairman, for humanitarian reasons, let us act now to stop this madness. We can claim that we did the right thing on Haiti, as the President would have it. Mr. Solarz' bill is a good first step.

What the administration is reportedly negotiating with the OAS and the U.N. is a good, concurrent, dual-track first step. But let me reiterate in closing, that the policy enunciated by this administration on May 24 is unnecessary. It is immoral, inappropriate, indefensible in light of the commitment to human rights this country has made over the years, and it is easily rectifiable.

Twenty or 30 more INS agents would allow for faster processing, faster screening, a faster turnover, and create more space in Guantanamo to allow for the new refugees who would be interdicted and brought to Guantanamo instead of sent back to the madness and the despair and the killing that is now their fate in Haiti. I think that would be the right thing.

Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Smith follows:]

REF. LAWRENCE J. SMITH
TESTIMONY BEFORE
THE HOUSE COMMITTEE ON FOREIGN AFFAIRS

Mr. Chairman, thank you for granting me the courtesy to testify before you today. I sincerely hope that Congress will act honorably to right the Bush Administration's wrong policy of directly returning Haitians who flee their country -- no questions asked.

The Administration's latest immigration directive on Haiti is election year politics at its worst. It is morally reprehensible and legally indefensible. But more importantly, it is clearly unnecessary.

This wrong policy can be easily righted. All the Administration needs to do is send more Immigration officials to Guantanamo Bay; this would speed up the processing of asylum claims. Those refugees who do not qualify for asylum would be returned to Haiti as before, making room available for incoming people. Those who do qualify would then be able to apply for asylum in the United States.

The directive threatens the international system to protect refugees that was established after World War II. This is why the United Nations High Commissioner for Refugees sharply reprimanded the Administration for its new policy.

With this directive, the United States has proclaimed that it is reversing its historic defense of refugees worldwide. We have overridden our own plea to Great Britain in 1987 not to repatriate Vietnamese refugees that sought asylum in Hong Kong-- and the British at the time did screen those refugees and did not return to Vietnam those that it determined might face persecution.

I commend Congressmen Solarz, Rangel, and Gilman for introducing legislation to ensure that the United States will not abandon its international commitments to protect refugees.

The Administration claims unbelievably that a lack of evidence that any repatriates have been persecuted means that none in fact have been persecuted. Let's make something absolutely clear: there is no way that the Administration or anybody else can satisfactorily determine if repatriates are being persecuted in Haiti. Just talking to a representative from a human rights organization can draw a death sentence for a Haitian citizen.

A human rights tragedy is underway in Haiti. Since the coup, the Haitian military has been systematically terrorizing the Haitian people. International human rights organizations such as Amnesty International estimate that 1,500 Haitians were killed in the months following the coup. That is a conservative figure.

Killings, severe beatings, arbitrary mass arrests, and torture continue. Countless other cases go unreported, particularly in the countryside. Any member of a grassroots, peasant, religious or lay organization, trade union, or student group, risks being murdered. Tens of thousands are in hiding. No wonder Haitians want to leave their homeland.

Even the slightest support for deposed President Aristide can be lethal. Two weeks ago, businessman Georges Izmary, brother of prominent Aristide supporter Antoine Izmary, was shot to death by gunmen believed to be linked to the Haitian military. Soldiers later stormed Izmary's funeral, beat mourners, and carted away ten of them.

Isn't it possible that some of the Haitian boat people are Aristide supporters who face persecution, like Mr. Izmary? Isn't possible that the President of the United States is being wrongly advised that every single one of the thousands of Haitians who are fleeing their country are leaving for economic reasons?

The security problem has been magnified by Haiti's reversion to a police state, which Aristide had worked hard to shut down. The Duvaliers' secret police, the Tonton Macoutes, were released by the de facto regime, and once again are in control. The Tonton Macoutes have been joined by the equally vicious rural sheriffs (chefs de section), many of whom have reclaimed their fiefdoms and are reigning with terror.

Finally, until the political crisis ends, the immigration crisis will not subside. In the eight months of Aristide's presidency, 1,700 Haitians attempted to flee Haiti; in the eight months since the coup, 35,000 have fled.

In February, I introduced an amendment, which the House passed, to Mr. Mazzoli's bill to stop for 180 days the repatriation of Haitians. My amendment expressed the Sense of Congress that the President should ask the United Nations or the O.A.S. to dispatch a peacekeeping force to Haiti to provide security and protect human rights.

An international show of resolve with UN "blue helmets" would compel the tiny Haitian army of 7,000 to accept a return to democracy. The first step toward a solution in Haiti thus should be the establishment of an international security force on the island under the auspices of the U.N. or the O.A.S.

We must make the militaries of this hemisphere understand that any attack on a democratic nation's sovereignty, including coups d'etat, will not be tolerated by the nations of the Americas. Absent such a show of resolve, the Haitian army will refuse to negotiate a solution.

Congress should take a two-pronged approach to solve the Haitian crisis. The Solarz-Rangel-Gilman bill should be complemented by the deployment of an international peacekeeping force to Haiti sponsored by the UN or the OAS to provide security and protect human rights.

Haiti is ready to explode. The army, however powerful, is divided. Recently, a group of soldiers warned on the radio that a political solution to the crisis had to be found soon. The rank-and-file reportedly have not been paid for two months. In the last few days, 11 soldiers have been killed, some of them allegedly by other soldiers.

Haitian society is more polarized than ever before. The Haitian people are running out of patience. The embargo is making the poor poorer, hungrier, and sicker. Meanwhile, our friends in Europe are making sure that the Haitian elites don't lose the creature comforts to which they are accustomed.

For humanitarian reasons, let us act now to stop the madness. Then we can claim that we did "the right thing on Haiti" as the President would have it. Thank you.

Mr. BERMAN. Thank you, Mr. Smith, for an excellent statement. I am sorry I missed your testimony, Mr. Oberstar. I would almost want to hear it again.

Mr. SMITH. He did it in Creole.

Mr. BERMAN. I certainly would want to hear what you had to say on the subject.

I recognize Congressman Chet Atkins, who has had a long-standing interest in U.S. refugee policies.

**STATEMENT OF HON. CHESTER G. ATKINS, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF MASSACHUSETTS**

Mr. ATKINS. Thank you very much, Mr. Chairman. Let me thank you for this opportunity to appear before you today, and also for the leadership of this subcommittee on this issue and on so many other human rights issues.

Mr. Chairman, ever since World War II, every single American administration from Harry Truman to Ronald Reagan has held a consistent, a clear and a total commitment to support the U.N. convention relating to the status of refugees. Indeed, it has been U.S. efforts and U.S. leadership under those administrations that has been the glue that has kept the international consensus relating to refugees together. Our policy, our leadership on refugees has been, I believe, the proudest and the most consistent principle of U.S. foreign policy.

On Memorial Day of this year, the Bush administration turned that proud history on its head, and in a craven act of political cowardice, the administration, in blatant disregard for the law and clear intent of Congress, made a decision to send back all of those fleeing from Haiti without giving them any opportunity for the hearings which they were entitled to.

It is curious, because before that policy was put into effect, by the U.S. Government's own admission, the results of our own hearing process, about one-third of those leaving Haiti were legitimately leaving out of a fear, and a well-founded fear, of persecution. Suddenly, in 1 day's time, the administration maintains that that one-third dropped to zero.

To be clear, the administration has tried to pretend that the people who are being returned to Haiti are not subject to persecution. Indeed, there is ample evidence, a number of people that have been returned have already been assassinated, and will you hear some of that evidence later in your testimony.

But what is, I think, particularly troubling about this policy is the fact that we have now set up in Haiti not just an economic embargo around Haiti, but we have established for the first time in modern history a human rights blockade around a country.

Let's be clear. The U.S. Coast Guard cutters now are not just returning people who are fleeing Haiti, trying to seek asylum as they are entitled to under international law in the United States; we are returning people who are trying to flee to Venezuela, people trying to flee to the Bahamas, people trying to flee to Surinam and to other nearby countries. People have a well-grounded fear of persecution, they were fleeing for their lives, and the United States

has put up an absolute and a total blockade around that island, preventing any people from escaping that persecution.

Just at the time that we celebrate the tearing down of the Berlin Wall, it has put up, in the words of Yale Law School Professor Harold Koh, a floating Berlin Wall around Haiti. It is an extraordinary and unprecedented act. And that has created a situation where the United States has gone from being the strongest defender of the U.N. Convention on Refugees to being the absolutely worst violator.

The net effect of that is that the Convention on Refugees, which has saved literally millions of lives over the just under four decades it has been in effect, is now falling apart. Absent U.S. leadership, with the U.S. disregard of this convention, with our violations of it, the convention is falling apart.

And it means, as the author of the bill, Steve Solarz mentioned earlier, that the half a million Muslims who are fleeing from Burma seeking refuge in Bangladesh are likely to be denied that refuge. It means that Vietnamese, seeking refuge in Malaysia, are liable to have their boats pushed back into the high seas. It means that people fleeing the continued Khmer Rouge policy and presence in Cambodia are likely to be pushed back from Thailand.

We can go on and on around the world, but this is an act which has disgraced the United States, and it is an act which has implications far beyond the situation in Haiti. It is an act which is presaging the virtual destruction of the U.N. Convention on Refugees, and which will virtually guarantee that hundreds of thousands of people will be put to their death—to their death as they are returned to countries where they were fleeing.

The other thing that has happened is the administration has discovered a new way to conduct foreign policy, and that is to avoid the sunshine of public scrutiny when you have a policy that is particularly shameful.

The Bush administration has aggressively resisted allowing representation for the Haitians at Guantanamo. Even though it was Lawrence Eagleburger and Brent Scowcroft who formulated this political policy, they have refused to defend it in public.

Indeed, today, Mr. Chairman, despite the efforts of this committee, the administration's policy will be defended by a Deputy Assistant Secretary of State.

I think it is unconscionable that the administration would make such a policy change, take such a shameful act, and then try to bury it, to hide it, to refuse to have the guts to stand up and to come here before the Congress and to defend their actions.

I thank you, Mr. Chairman, again, for your leadership on this issue.

[The prepared statement of Mr. Atkins follows:]

TESTIMONY OF CONGRESSMAN GUYSTER G. ATKINS BEFORE
THE FOREIGN AFFAIRS SUBCOMMITTEES ON INTERNATIONAL OPERATIONS AND
ON WESTERN HEMISPHERE AFFAIRS

MR. CHAIRMAN, I APPRECIATE THIS OPPORTUNITY TO APPEAR BEFORE YOU TODAY TO ~~SHARE MY VIEW~~ OF THE ADMINISTRATION'S OUTRAGEOUS AND UNPRECEDENTED POLICY TOWARDS REFUGEES FLEEING HAITI.

EVER SINCE WORLD WAR II, WHEN OUR NATIONAL CONSCIENCE WAS PRICKED BY OUR OWN REFUSAL TO ACCEPT JEWISH REFUGEES FLEEING NAZI GERMANY, ONE OF THE PROUD PILLARS OF U.S. FOREIGN POLICY HAS BEEN OUR INTEREST IN PROTECTING REFUGEES.

RECALLING THE TRAGEDY OF THE ST. LOUIS REFUGEE SHIP, IN WHICH 930 JEWISH REFUGEES FLEEING NAZI GERMANY WERE REFUSED REFUGE BY U.S. IMMIGRATION AUTHORITIES, THE U.N. CONVENTION RELATING TO THE STATUS OF REFUGEES WAS ESTABLISHED. THIS CONVENTION CREATED THE PRINCIPLE THAT NO NATION SHOULD AID AND ABET PERSECUTORS BY SENDING BACK REFUGEES FLEEING THAT PERSECUTOR. AT THAT TIME, THE WORLD'S REFUGEE PROBLEMS WERE FOCUSED MAINLY ON EUROPE.

IN 1968, THE UNITED STATES AGREED TO THE U.N. CONVENTION AND BECAME AN ACTIVE PARTICIPANT IN THE WORLD'S REFUGEE PROBLEMS. OUR HUMANE POLICY HAS WORKED WELL FOR US THROUGH GOOD AND BAD TIMES, THE MOST OBVIOUS EXAMPLE BEING OUR INTEREST IN PROTECTING REFUGEES FROM SOUTHEAST ASIA.

MOST RECENTLY, THE UNITED STATES HAS CONDEMNED MALAYSIA FOR REJECTING VIETNAMESE REFUGEES AND GREAT BRITAIN WHEN IT BEGAN TURNING AWAY VIETNAMESE REFUGEES FROM HONG KONG.

BUT ON MEMORIAL DAY, THE ADMINISTRATION ANNOUNCED A COMPLETE ABANDONMENT OF THIS PROUD U.S. FOREIGN POLICY ACHIEVEMENT OF HUMANE TREATMENT. IN BLATANT DISREGARD FOR THE LAW AND THE CLEAR INTENT OF CONGRESS, THE ADMINISTRATION MADE THE DECISION TO BEGIN SENDING BACK ALL THOSE FLEEING HAITI WITHOUT EVEN CHECKING TO SEE IF THOSE LEAVING WERE ESCAPING FOR POLITICAL OR ECONOMIC REASONS. BEFORE THIS POLICY, BY THE U.S. GOVERNMENT'S OWN ADMISSION, ABOUT ONE-THIRD OF THOSE LEAVING HAITI WERE LEGITIMATELY LEAVING FOR FEAR OF PERSECUTION. SUDDENLY, IN A DAY'S TIME, THE ADMINISTRATION SEEMS TO HAVE MADE THE ASSUMPTION THAT THIS ONE-THIRD HAD DROPPED TO ZERO.

MR. CHAIRMAN, WE ARE NOT JUST TALKING ABOUT ACCEPTING HAITIANS TO OUR SHORES OR EVEN THE SQUALID CAMP AT GUANTANAMO. OUR COAST GUARD IS, IN FACT, ENGAGING IN A BLOCKADE OF FLEEING REFUGEES. OUR COAST GUARD IS ESSENTIALLY PREVENTING HAITIANS FROM NOT ONLY ESCAPING TO THE UNITED

STATES, IT IS PREVENTING HAITIANS FROM FLEEING TO VENEZUELA, OR THE BAHAMAS, OR SURINAM, OR ANY OTHER NEARBY NATION. PROFESSOR HAROLD KORN FROM THE YALE LAW SCHOOL, WHO WILL BE TESTIFYING LATER THIS AFTERNOON, HAS REFERRED TO OUR POLICY AS A "FLOATING BERLIN WALL." THIS IS NO EXAGGERATION. INDEED, THE COAST GUARD'S OWN STATISTICS INDICATE THAT WE HAVE ONLY SENT HAITIANS BACK TO HAITI, AND NOT ANY OF THESE OTHER NATIONS.

MR. CHAIRMAN, IT IS CLEAR THAT THE ADMINISTRATION IS AFRAID OF THE SUNSHINE OF PUBLIC SCRUTINY WITH ITS SHAMEFUL POLICY ON HAITI. THE GOVERNMENT HAS AGGRESSIVELY RESISTED ALLOWING REPRESENTATION FOR THE HAITIANS AT GUANTANAMO. AND, EVEN THOUGH IT WAS LAWRENCE EAGLEBURGER AND BRENT SCOWCROFT WHO FORMULATED THIS POLITICAL POLICY, THE ADMINISTRATION HAS INSTEAD SENT A DEPUTY ASSISTANT SECRETARY FOR REFUGEE PROGRAMS TO JUSTIFY IT.

WE SEE BEFORE US TODAY REFUGEE PROBLEMS THROUGHOUT THE WORLD, BOTH LARGE AND SMALL, RANGING FROM SOUTHEAST ASIA, TO AFRICA, TO YUGOSLAVIA AND ALBANIA, TO OUR OWN HEMISPHERE. IF THE UNITED STATES DROPS THE VERY PRINCIPLES WHICH WE HELPED ESTABLISH WORLD-WIDE, WHAT KIND OF MESSAGE ARE WE SENDING THE REST OF THE WORLD?

MR. CHAIRMAN, THE ADMINISTRATION'S POLICY IS NOT JUST A VIOLATION OF U.S. AND INTERNATIONAL LAW. IT IS NOT JUST A CRUEL TRICK PLAYED ON SOME OF THE POOREST AND MOST OPPRESSED PEOPLE IN THIS MISERY. IN THE BROADER SENSE, IT IS MUCH MORE, FOR THE ADMINISTRATION'S POLICY ESTABLISHES A PRECEDENT WHICH COULD LEAD TO THE COMPLETE UNRAVELING OF ESTABLISHED INTERNATIONAL LAW ON THE TREATMENT OF REFUGEES. WE MUST TURN BACK FROM THAT PATH AND REESTABLISH THE UNITED STATES AS A LEADER IN THE MORAL AND LEGAL TREATMENT OF REFUGEES.

Mr. BERMAN. This is not a panel that minced its words, and I share the feelings and views expressed by the panel.

I want to give my colleagues on the committee the opportunity to question the witnesses, to remind everyone that we still have an administration representative testifying, and then a panel of public representatives.

First I would like to recognize my colleague, the chairman of my Subcommittee on International Law, Immigration and Refugee Affairs, whose subcommittee has jurisdiction over our basic refugee law, for any opening comments he might have and questions of the witnesses. I appreciate his attendance here.

Mr. MAZZOLI. Thank you very much, I appreciate your indulgence and courtesy to me. I welcome all of our colleagues who made very excellent statements. Just a brief statement, and then I would, I guess, ask a question.

The House, to its credit, did pass a bill which the gentleman from California and others have helped us with, in the other body, and there has remained at rest, quiescent since February. We must not lose sight of that because it could very well be that as we are trying to move legislation, we could refresh that bill, and that could become the very vehicle.

Certainly the gentleman from Kentucky has often wondered about the whole policy of interdiction. I just think the policy itself is a clear discriminatory policy. It is loathsome in many respects. It does single one group of people out. And I think it ought to be contemplated for cancellation, for many reasons.

At the same time, I would like to indicate that I have some concerns about the embargo, and I realize how sensitive that issue is. I wonder about the wisdom and the humanity of continuing an embargo which really creates a situation in which we are now trying to deal with—and I would love to have my colleagues help me a little bit on thinking our way through that, because it does seem to be a problem.

But I would also suggest that—and this is also a bit provocative—whether or not the reinstallation or the installation of the Aristide government is actually going to ever happen, and should that be the in-go of our policy, when some of you may have read articles that appeared in the paper, in part quoting the gentleman from the District of Columbia, Mr. Fauntroy, who was at one time our esteemed colleague, who wonders about that being our goal, instead of maybe full and free elections, monitored perhaps under the aegis of the OAS or U.N. or something.

So I believe we certainly ought to screen people, they should not be returned, and I think the gentleman from New York's bill would contemplate that.

I don't know that they have to be all put to Guantanamo. There are other places where the people could be held or housed until such time as their hearings were to take place. But, Mr. Chairman, again, I appreciate the effort that all of our panel have made to deal with these questions, but I would like to ask a few questions. One is, should the embargo continue? Is that one we ought to make hermetically airtight? And then secondly, should the return of the Aristide government be the absolute end-all and be-all of our policy?

Mr. BERMAN. Let's just take it right down.

Mr. Solarz.

Mr. SOLARZ. Notre Dame graduate Mr. Mazzoli asks a very thoughtful question. I am sure he knows where Father Ted would stand on this legislation. And if it gets referred to the gentleman's subcommittee, I hope he will keep that in mind.

With respect to the embargo, obviously there are differences of opinion. My own view is that the best way to end the refugee crisis is to restore democracy to Haiti.

During the period of time between the election of Father Aristide as President and his overthrow by the military, you didn't have many Haitian boat people trying to get to the United States, even though the country was desperately poor.

In my judgment, and I realize this is something on which reasonable people can disagree, the best way to bring about a restoration of democracy is to tighten up this embargo, prevent them from getting the oil that is keeping them afloat. I think that is more likely to bring this government down and restore democracy than letting up on the embargo.

But the most important point I would make here is that whether or not we lift the embargo or maintain it, this bill simply deals with the question of whether we screen people before we return them. I therefore think there is a need for it, whether the embargo continues or even if it is lifted.

With respect to the elections, certainly the reestablishment of democracy in Haiti ought to be a primary American objective. Not the only one, but a primary one. And in the long run, a real solution to the problems in Haiti requires as a necessary, if not sufficient, condition, the reestablishment of democracy.

One final point—

Mr. MAZZOLI. Now, that is different possibly than the Aristide government.

Mr. SOLARZ. There are implications here for other nascent democracies around the hemisphere. We don't want to lend legitimacy to the notion that somebody can be elected President and then be swept aside by the military, because that could encourage military coups in other countries as well.

The last point I want to make, Mr. Mazzoli, is simply this. It may be that we are not violating international law, although I believe we are. But even if you believe we are not, that doesn't mean that we are obligated to return these people to Haiti.

Insofar as the screening is concerned, as Mr. Smith suggested, under the terms of this legislation, it would be perfectly possible for the administration to bring these people to Guantanamo, get more screening officers, screen them quickly, and as soon as a final determination is made that they are not eligible for refugee status, they could then be returned.

Now, personally I would hope they could be given temporary protected status until democracy is reestablished, but for somebody who doesn't want to do that, this bill wouldn't require it. All this bill requires is that they be screened first, and if they have an expedited procedure for screening on Guantanamo, and I am told the UNHCR is willing to help out with this, there is no danger of

Guantanamo being overrun, because the turnaround could be quick, but we would have at least upheld our obligations.

And I pity the poor diplomat, the poor American diplomat who in the future is asked to go to the British or the Bangladeshis or the Malaysians or Thais and say, "respect the principle of first asylum." There will be peals of laughter in the room. They will say, "who are you kidding? You guys don't respect the principle yourself. Why should we?"

We are forfeiting our moral leadership here and, as a result, compromising our capacity to come to the defense of refugees all over the world.

Mr. BERMAN. Mr. Oberstar.

Mr. OBERSTAR. The case on international law has been stated very well by Mr. Solarz in response to Mr. Mazzoli's question. The matter of the embargo, I said in my remarks, it was the only avenue available to the administration short of sending the Marines in to clean the nest of vipers out and reestablish legitimate government.

The fact is the people of Haiti elected Father Aristide. Mr. Goss and I were part of the presidential commission. We traveled to the hinterland and down into the heart of Port-au-Prince. We talked to the people. I speak the language. I know who the people voted for. They voted for freedom. They voted to get rid of Duvalierism, Macoutesism.

Now you are saying, If you leave your country for economic—you are an economic refugee, we are going to send you back. They know what was oppression in their country. You send them back to become political refugees if they weren't in the beginning.

And finally, the embargo, just like the embargo against Serbia—too little, too late. Not effective. Where it is having the effect is where we really don't want it to have an effect, and that is on the poor, on the oppressed, on those who voted for freedom. We shouldn't be shipping them back to a certain fate.

Mr. BERMAN. Do you gentlemen have a comment for Mr. Mazoli?

Mr. SMITH. Yes, because he was kind enough to work with me back in February on allowing for that amendment which I sponsored on the floor to his bill, which in reference to Haiti called for the possibility of the U.N. and/or OAS jointly going there to provide some protection for the Haitians.

This is what we need to make the Haitian military junta understand: that the embargo itself will remain and be strengthened. If we can put some foreign presence on the ground, they will understand we mean business.

Currently, our policy suggests to them that we are going to allow them to stay and help them corral the opposition by putting back all of their enemies on the island where they can be gotten at by the regime. This sends a very bad signal to those that we want to remove: "You can stay as long as you like, we are going to deliver your enemies back to you. They are not a threat, they have no weapons, no power, no finances, no nothing. We are going to leave them to you so you can dispose of them." That is a terrible signal. It perpetuates the reality of being able to stay in power.

What we need to do is tighten down this embargo and do something else quickly, because, as Mr. Oberstar indicated, and as I indicated, the reality of the embargo is that it is going to be hurting the poorest of the poor, the hungriest of the hungry and the sickest of the sick. They are the ones hurt first. They have no money, they have nothing.

But if the United States gives them hope, if the U.N. and the OAS will give them hope by showing that they care enough to start a process which can restore their democratically elected government, they will stay on that island. I believe they want to be part of that process.

There were only 1700 in 8 months who fled when Mr. Aristide was in power as opposed to the 40,000 who fled in the ensuing 8 months. And they are entitled to Mr. Aristide. I don't care who he is. They elected him democratically. Mr. Goss and Mr. Oberstar were there. They saw it.

Mr. Aristide is what the Haitians wanted. They are entitled for us to be as sympathetic to their democracy as we are antithetical to that military dictatorship.

But if we don't do anything to restore Mr. Aristide, but in fact do everything that looks to them like we are trying to perpetuate the military junta, they are going to give up hope. And that is when you are going to see the country crumble completely, and I think that is something we should avoid at all costs.

We owe it to those people. We owe it to everybody in this hemisphere to make sure the United States stands up at all times for democracy. What a terrible signal if we try to restore democracy but not the democratically elected leader they chose, but somebody of our choosing. We would only be substituting ourselves for the military junta. That would be terribly wrong.

Mr. MAZZOLI. That is not what I contemplated, but to have supervised elections in some fashion, because of the fact that this thing may have reached a point of no return.

Mr. SMITH. But, Mr. Mazzoli, wouldn't you in fact be telling the Haitians the very same thing? You had elections 8 or 9 months ago, and now we are sorry, but we want you to have elections all over again. I don't buy that. They are entitled to Mr. Aristide. That is who they elected.

Mr. BERMAN. No one has accused the candidates of this country of being cosmic, that is all I know.

Mr. SMITH. I am not so sure about that, Mr. Chairman. They might not have used the exact term.

Mr. BERMAN. Mr. Atkins.

Mr. Gilman, any questions?

Mr. GILMAN. Thank you, Mr. Chairman.

I certainly want to commend our distinguished panelists for the manner in which they have presented the arguments with regard to the legislation before us.

The people of Haiti have long suffered under the brutal and arbitrary rule that has existed in Haiti for far too long. In 1986 they ousted President Duvalier, and in 1987 an overwhelming majority the Haitians approved a constitution which established the legal framework for the election of a civilian government. In December

1990, in a free and fair election, Father Aristide won almost 70 per cent of the vote, something we too quickly forget.

Mr. Chairman, with democratization spreading throughout the globe, most of us are willing to believe that the era of the dictator was almost over. But elements of the Haitian Armed Forces forced President Aristide to flee, taking control of the government, and that control still exists.

While the Aristide government didn't have a perfect human rights record—far from it—Mr. Aristide is still in fact the duly elected President of that government.

Many of us have kept a close eye on the developments in Haiti for a number of years. We even have a Haitian Caucus in Congress. A number of our panelists serve with us on that caucus.

Last February, I accompanied the distinguished gentleman from New York, Mr. Rangel, the gentleman from New Jersey, Mr. Payne, as well as some of our other colleagues to Haiti, and after an extensive series of meetings with government officials, with military officers, private citizens, both for and against Aristide, it was our unanimous conclusion that forced repatriation had to come to a halt. Regrettably, our views did not prevail. Although legislation passed the House, it is still languishing in the Senate.

Now, however, the situation is far worse. In May of 1992, as our panelists indicated, the Bush administration decided to force all fleeing Haitians back to Haiti. We were shocked at that decision, shocked at the consequences at two levels. First, we are now returning Haitians who could be fleeing for their lives. We do not know if they are real refugees because we are not screening them at all. There are no interviews, no discussions, no checking of facts. We are simply forcing them back into a nation ruled by a military dictatorship which we do not recognize.

Our second concern is the international repercussions of this decision. The real effect of May 24 Executive order is to endanger the right of first asylum throughout the globe.

How can we ask the governments, for example, of Bangladesh not to turn back Muslims fleeing Burmese territory? How can we ask Malaysia or Hong Kong to accept Vietnamese migrants long enough to screen them before repatriation? The answer is, of course, we cannot.

These governments and many others make the same points we have heard from the administration. These are economic migrants, not political refugees. We do not have the resources to handle the flow. The existence of camps is a magnet, and so on.

I believe our decision to return Haitians without screening is certainly wrong. It is a violation of all of our principles. It will harm nations and refugees throughout the world. A number of us have cosponsored the legislation along with Mr. Solarz, H.R. 5360, to prevent such a policy from ever continuing, and I commend our panelists for supporting that measure.

Now, I would like to address a question to the panelists. What do you suggest besides this instant problem that we should be doing with regard to the Haitians that confronted the OAS, confronted our Nation, confronted other nations, as to how we resolve the problems in Haiti? Everyone that we talk to in Haiti said this is

not the time for Mr. Aristide to return, and yet we are trying to find an amicable solution.

Mr. Solarz.

Mr. SOLARZ. Mr. Chairman, I have no magical solutions to the problems in Haiti. I wish I did. But I do believe we have a solution on how to deal with this refugee crisis. It is contained in the legislation which you cosponsored.

If it is enacted, it will enable us to undo a dishonorable decision, maintain our worldwide leadership on behalf of refugees, and bring us back in to compliance with international law without in any way opening up the floodgates to unlimited movements of Haitians into the United States.

So I hope you will forgive me, in deference to the time—and I know there are other witnesses—if I don't respond to your request for the panacea for Haiti. I would be happy to discuss it with you on another occasion.

Mr. GILMAN. Mr. Oberstar, do you have any comments?

Mr. OBERSTAR. First of all, I want to compliment the gentleman from New York on his steadfast support for democracy in Haiti. He has taken a very personal, key interest over many years, devoted a great deal of time, energy, and thoughtfulness to the subject, and again demonstrated in his just delivered statement his sensitivity to the problems in Haiti.

What would be the solution to the problem of Haiti? Frankly, last fall, shortly after the coup, my reaction was that we ought to clean out the nest of vipers and send in an international force, and wipe out the army and wipe out the Ton-Tons Macoutes and hang-on Duvalierists, reestablish Aristide, and there wasn't a great deal of stomach for that approach, and people thought it was too soon, too early.

My statement at the time was that if we don't do something drastic, there will follow a long period of suffering and misery, and it didn't take a great knowledge of Haitian history to figure that out, and that is what has happened.

We are where we are, and there is a vote being taken today in the Haitian Senate and the House of Deputies to confirm the preliminary vote taken yesterday on establishing Marc Bazin as the prime minister. With a little bit of time and patience, perhaps he can work out something within the ambit of OAS, with President Aristide for his return, to resume his office, legitimacy as President. Perhaps through that process, if we just are patient and work with it, maybe Haitians can work out a solution on their own. Counterbalancing a peaceful resumption of government by Aristide is the up-to-now intransigence of the army and of its chief of staff, General Cedras.

And unless there is some *modus vivendi* worked out, I don't see how under any peaceful circumstances Aristide can come back. But Marc Bazin may be able to do something. My concern is that Marc Bazin under these circumstances is to a degree in the position that Leslie Madega was in 1988, when the army rigged an election, put him up as their candidate, had him elected President. Of course, he had no legitimacy whatever. In this circumstance there is some little difference, that Marc Bazin was elected by the two bodies of the Haitian legislature, granted, with barely a quorum present in

the House of Deputies, granted, under perhaps the watchful eye of the army. I don't like that situation. I don't think it is in a democratic tradition.

But maybe amongst themselves and with some help from international organizations to maintain peace, the quintessential condition can be met, Aristide can return, resume his presidency and resume legitimate rule of the country.

Mr. GILMAN. Thank you.

Mr. Smith.

Mr. SMITH. Mr. Gilman, for 200 years the people of Haiti have been dealt from the bottom of the deck. They had democracy for a total of 8 months during that 200-year period. The only time they had an election, Mr. Aristide was democratically elected. Our policy ought to be to restore that government. That is what a commitment to human rights and democracy ought to be, period.

I think the whole question of the refugees could be accommodated by a faster turnaround time, by adding more INS agents at Guantanamo. The refugees shouldn't be held hostage to the foreign policy of this country. So if you made the screening process not faster but made more people available to do the screening, you could determine who are qualified to apply for political asylum here, and who to send back to Haiti. The proponents of giving Haitians the right to have the screening, they have never asked for anything more than giving them a legitimate asylum process.

I believe we need to foster a specific group of OAS and/or U.N. countries to get together to provide the basis for a vote, to go down and give us a peace-keeping force, monitoring human rights, basic rights in Haiti, to put a foreign presence on that island. In my estimation, that is the first step to the second track, which would be to give them back their government. What is required is a show—not of force, but of a commitment by the OAS, the countries of the region, and by the U.N., that we are going to do something, that they can't get away with this. Mr. Bazin, with all due deference to Mr. Oberstar, was the candidate that the OAS specifically did not endorse for prime minister. The Haitian assembly and Senate specifically voted for the other candidate.

We need to go down to the island and take the first step of providing a foreign-presence, an umbrella of "peaceful watchers," U.N. blue helmets if that is what it takes, to start the process of showing them that we are determined to bring the military dictatorship to an end. That then should result in bringing back the democratically elected President, and that in the long run, I think, will have the effect of stopping the flow of refugees. If they believe we are doing something, and in the long run, restoring the democracy that we need to prevent further violence and further refugees from coming to the United States.

Mr. GILMAN. Mr. Atkins.

Mr. ATKINS. Others have spoken about the potential scenarios to restore democracy in Haiti—but I would just suggest that it is extremely important for us to keep these issues separate. The whole purpose of the U.N. convention and the treatment of refugees was to avoid having refugees and refugee policy become an instrument of foreign policy, with one country and another.

I think it is important for us to look at this issue separately from the question, even though the two are related, of the restoration of democracy in Haiti. And I think we need to be clear on that.

And the other purpose of the U.N. convention on the treatment of refugees was to assure that refugee policy was not subject to the exigencies of domestic politics in the country of first asylum. And I think it is important that we maintain that principle.

Essentially what the U.N. said is, irrespective of what the nature of the conflict, irrespective of the relationships between countries, there is a basic right that goes not to countries but to human beings, a right to be able to flee persecution, to flee persecution in the country where you live, and to be able to seek asylum in another country. And that is the right that has been destroyed by the Bush administration policy, not just in Haiti but worldwide.

Mr. GILMAN. Thank you.

I want to thank our panelists and I thank the chairman for his indulgence.

Mr. BERMAN. Thank you very much, Mr. Gilman.

Just a simple status report here. It is 20 minutes to 3. We have Ambassador McKinley. We have three witnesses coming from far away who also have much to say on the subject.

With that, Mr. Payne.

Mr. PAYNE. I won't ask any questions of the panel. I think it is very clear, and I think that most of their thinking is certainly in line with my thoughts, so I will yield back the balance of my time.

Mr. BERMAN. Thank you very much.

Mr. Goss.

Mr. Goss. Mr. Chairman, I would pass entirely, except there is one point that I need to straighten out, that our colleague Mr. Solarz from New York made, and I want to make sure there is no mistake in the record.

We, in Florida, welcome Cubans of all color under the Cuban Adjustment Act, and none are turned away because they are black.

Thank you.

Mr. BERMAN. Mr. Torricelli.

Mr. TORRICELLI. No questions, Mr. Chairman.

Mr. BERMAN. One note, and I really do appreciate it, you guys have given us excellent testimony, and I think you have made a compelling case for action, and quickly. This is a debate on shifting sands. I am trying to remember all the different ways this argument has been shaped.

Our first concern was, were the people who were being screened actually being sent to the United States so they could take advantage of the process that is available to them under the law? And then the question became, what kind of a screening is going on in Guantanamo, and then to what extent are we repatriating people who have already been screened in?

And now all Mr. Solarz is doing in this bill is simply trying to stop forced repatriation of everyone with no screening whatsoever. So this debate has come a long way in just a very few months, and our policy and our protections keep eroding.

And the only point I would like to make—it is not really a question. Mr. Smith pointed out a way to deal with this issue, but there are also, and we are going to hear about that from the last panel,

questions about counsel and adequacy of screening. These are things that need to be dealt with.

I won't take the time now to read what the judge who denied the latest request for injunction said as he excoriated the government for its present policy.

Thank you all very much for coming, and we will proceed to the next panel.

Mr. BERMAN. The next panel is not a panel, but it is Ambassador Brunson McKinley, who is the Deputy Assistant Secretary for the Bureau of Refugee Programs at the Department of State, a man who also has reason to know much about Haiti as well. If I am not mistaken, he was our ambassador to Haiti.

We have set an atmosphere of introduction for your testimony here which I am sure you will appreciate, and we welcome you to the committee. We have your full statement; we will put that in the record. I know there will be questions and areas that we want to explore with you, so if you would be willing to summarize. But your testimony is important, so you be the judge of the extent to which you should or shouldn't summarize.

Thank you very much.

STATEMENT OF HON. BRUNSON MCKINLEY, DEPUTY ASSISTANT SECRETARY OF STATE FOR REFUGEE PROGRAMS

Mr. MCKINLEY. Thank you very much, Mr. Chairman. It is a pleasure and a privilege for me to be here today to represent the administration policy on Haiti boat people.

I will be as brief as I can, because I do believe that in the question-and-answer period we can come to grips with some of the very difficult problems that have been raised already by the preceding panel.

As you said in your introduction of me, I was from 1986 to 1989 our ambassador in Haiti, so I know the country and I know its problems. And it was my privilege to work closely on democracy in Haiti with Congressmen Rangel and Solarz and Oberstar and others during that time. So I know their views. I respect their views. I share their views in many instances.

I am at present a Deputy Assistant Secretary in the Bureau of Refugee Programs of the Department of State, so I appear before you as well as an advocate for refugees and a spokesman for U.S. refugee policy. I think it is important for me to give you this background so that you will understand when I say that this has been for the administration an extremely difficult policy decision, a real dilemma, and one where important considerations on many sides of the issue were brought to bear, and where decisions were not lightly taken by the President and his senior advisors, where a vigorous debate went on inside the executive branch of the government before extremely difficult decisions had to be taken.

And you know what the latest in that series of decisions was. On May 24, President Bush issued an Executive order which permits the Coast Guard to return Haitians directly when picked up at sea.

The one element I found missing in the presentations of the previous panel is the one I want to focus on, and that is the magnet

effect and the increasing numbers of the Haitians with which we had to cope.

I believe you have available to you these charts and graphs which I brought with me. I hope you do. They show statistically how over the course of the last 8 months we attempted to cope with three separate outflows of Haitian boat people, the third and most massive occurring in the months of April and May, which eventually overwhelmed our ability using Coast Guard cutters and the base at Guantanamo to cope, and which compelled us to take the drastic decision of returning people directly to Haiti.

It was in the face of rising and increasingly unmanageable outflows, and only after exploring all possible alternatives, that this decision was taken. For as long as we could, we used the base at Guantanamo as a humanitarian sanctuary and a location for interviewing Haitian boat people to allow those with credible claims, to allow those with legitimate claims to be brought to the United States for asylum.

In the month of May, more than 13,000 Haitians were picked up. We were overwhelmed. Moreover, we became convinced that the Guantanamo operation and the presence of U.S. Coast Guard cutters offshore had become a magnet, causing more and more Haitians to take to the boats. Under these circumstances, we felt we were compelled to act to end or to reduce greatly the boat exodus.

We faced an excruciating dilemma. The Haitians wanted to come to the United States. We have heard eloquent testimony from members of the earlier panel on the legitimacy of their desire for a better life. We don't quarrel with that.

They put their lives at risk attempting to reach the United States. To save their lives and to defend our immigration laws, we picked these people up at sea. We opened a camp at Guantanamo, at some risk to our policy with Cuba and on rather shaky legal grounds, but we did it—

Mr. BERMAN. I have to interrupt there. At risk of our policy toward Cuba?

Mr. McKINLEY. Well, let me put it this way. The basis on which we are operating, the lease agreement that we have with the Cuban Government, does not include operating refugee processing. This was a consideration.

Mr. PAYNE. Mr. McKinley, let me ask you this. I understand that the grant or whatever we pay to Cuba for the base, that they haven't cashed any of the checks anyway. In other words, they don't recognize the lease. They feel we are there illegally. We pay them each month, they don't cash the checks. So what are you worrying about violating?

Mr. McKINLEY. I think you are actually making my point, Congressman. The presence that we have at our base in Guantanamo is controversial with the Cuban Government, and—

Mr. PAYNE. But that is like 20 years old. That is nothing new. It was controversial after 1961, when a new regime came into power, and in 1992 we became sensitive to the Cubans' feeling about the U.S. base on Cuba?

Mr. McKINLEY. Well, I will make your point, since I think you have partially made mine. The Cuban Government so far has not given us trouble about the operation on Guantanamo. But there

was a consideration inside the Government that they could and that we might lose the base over this. But your point is well-taken, they have not in fact—

Mr. PAYNE. My last point, do you think this is more sensitive to them than the Bay of Pigs?

Mr. BERMAN. Or the legislation moving through Congress.

Mr. McKINLEY. No. I think this is a small point.

Mr. PAYNE. Very small point.

Mr. McKINLEY. The point I was getting at really was not to suggest that we are having trouble with the Cuban Government, but that having opened a refugee processing operation in Guantanamo, we in effect turned on a magnet. By doing so, we have encouraged more people to leave Haiti in unseaworthy boats, and the magnet effect went well beyond the political refugees, and I don't quarrel with the description of the previous panel about mixed motivation. Clearly, there were political refugees in this flow and there were others who had a political motivation to their departure, but we also had many that were economic in their motivation.

I am not quarreling with the characterization. But the magnet effect certainly operated on people who were not suffering any form of political oppression but simply wanted a better economic opportunity.

So the dilemma of the magnet of Guantanamo is real, and I think it has been magnified by the need to employ an embargo in our efforts to restore democracy, which adds further to the economic pressures on the already very poor Haitians.

Under these circumstances and recognizing all the downsides, we came to the conclusion that it was imperative to put an end to the magnet effect by returning Haitians directly to Haiti. Now, we will continue to pick up those who set forth in small, unseaworthy boats.

I will say to you that over the course of the last week to 10 days, there have been very few Haitians. They are not coming out by boats anymore.

Moreover, we are going to continue, as we have since February, to process any Haitians who fear persecution at our embassy in Port-au-Prince. We have spread this word very widely.

One of the charts or graphs I gave you earlier gives you up-to-date facts and figures about the in-country refugee processing operation. So far we have received, as of yesterday, a total of 1,582 applications. So it is a substantial, a real program. The embassy has been processing refugee applications since February with no interference from the Haitian authorities.

I think it is worth noting, because there was some confusion earlier, that we are talking about two different kinds of processing here. The processing inside Haiti is for full refugee status and admission as such to the United States. The processing at Guantanamo was an asylum prescreening where the standard applied was much more generous, and applied much more generously. So you have to bear that in mind when you are comparing rates of screening.

I also want to emphasize to you that in-country processing is something extraordinary. It is a step that we have taken rarely, and we took in response to the Haiti crisis because we thought it

would help stem the flow of Haitians taking to sea in unseaworthy boats. We have in-country processing in Moscow for the former Soviet Union, and in Vietnam, in Cuba, and in Port-au-Prince. Those are the only places we do it. So it really is something very special that we have put in place, and as I said, it exists, it is working, knowledge of it is very widely spread throughout Haiti amongst our human rights network, our political network, churches, missions and so forth.

Moreover, we are monitoring the returnees carefully. We are working with the International Federation of the Red Cross to expand the international, credible monitoring effort in Haiti. This monitoring, which we do ourselves extensively—we have looked at over 2,000 cases of returned refugees without finding any instances of persecution—is an important element in our policy, and an important element in our ability to be sure we are not sending anyone back in harm's way.

We are hoping that the OAS-DEMOC observers will soon arrive and be able to expand our effort. That is an important part of our policy, as you know, and something we have been pushing for right along and especially since the OAS protocol of last February.

This, of course, is not all we are doing for Haiti, nor is it the most important aspect of our overall Haiti policy. The only good answer to the dilemma of the Haitian boat people is to address the fundamental problem facing the entire Haitian population, the need to restore democratic legitimacy. When that happens, Haitians can have hope for a better life without leaving their country.

We and the OAS are doing what we can. In the meantime, we are endeavoring to address the basic needs of the people. We have increased our humanitarian assistance programs, which total over \$47 million, and health care services, which reach nearly 2 million people. We have called on other nations to increase their humanitarian efforts.

Fundamentally, however, the answer to Haiti's problem and the desire of its people for a better life can be found only in the political realm through the restoration of constitutional government.

My statement goes on, Mr. Chairman, to discuss many of the aspects raised by the earlier panel, the applicability of the refugee convention, comparisons with Cuba, comparisons with Vietnam, the charge that there is a racist motivation in our policy, which I would like to totally reject. I would be glad to go into the facts and figures which show that many, many Haitians come to this country as immigrants. A tenth of the population of Haiti lives in this country. They are one of our best recent immigrant populations.

Don't forget, as you might, if you believe the comparison with the St. Louis, we have admitted 10,000 Haitians just in the course of this last crisis. More Haitians than Cubans have entered the United States over the last 10 years and have obtained legal status here. They are our fifth largest immigration group. So there is no discrimination against Haitians as Haitians or because they are black.

We can also talk about temporary safe haven, temporary protected status, and things of this nature, if you want.

One thing I would like to say before I pause for your questions, and that is that the difficult, painful decision we were forced to

take in the instance of the Haitian boat people should not be taken by anybody in this country or overseas as a diminution of our commitment to leadership on refugee policy, which remains intact. We are, of all the nations in the world, the one which receives for resettlement the largest number of refugees, and which gives the most tax dollars to the support of refugees in camps and as they repatriate around the world, and we will continue to do that. And we will continue to urge people to allow first asylum, and we will continue to give lots of money and lots of help in those situations. We are working with the quarter million Rohingyas, the Burmese Muslims who are now in Bangladesh, and we will continue to do so, and we will work very closely with the Government of Bangladesh. We think there are significant differences between the problem that has confronted us in Haiti, and which we have had to deal with in the way that we have, and your traditional refugee situations and crises, which we will continue to try to handle as we have in the past, and I think with every success.

I do believe it is fair to say that the kind of problem we have confronted in Haiti is growing in frequency around the world, and you see the Europeans with Yugoslavia are confronted with the same kind of thing, and we are all going to have to learn to cope with this. But the commitment of the U.S. Government to first asylum and protection of true refugees is in no way diminished and will not be diminished in years to come.

So thank you, Mr. Chairman. I would be very happy to try to answer your questions.

[The prepared statement of Mr. McKinley follows:]

STATEMENT OF AMBASSADOR BRUNSON MCKINLEY

Deputy Assistant Secretary
Bureau for Refugee Programs
U.S. Department of State

June 11, 1992

Before the

United States House of Representatives
Committee on Foreign Affairs
Subcommittee on Western Hemisphere Affairs
and
Subcommittee on International Operations

ADMINISTRATION POLICY

On May 24, 1992 President Bush issued an executive order which permits the U.S. Coast Guard to return Haitians picked up at sea directly to Haiti. Since that date, we have picked up and returned to Haiti 2,887 Haitians. In the past week, once information on the new policy became widespread, we have interdicted only about a dozen Haitians. There have been no reports of mistreatment of returnees.

This was a difficult decision, taken only in the face of rising and increasingly unmanageable outflows and after seven months of exploring all possible alternative means of addressing the outflow of Haitians in unseaworthy boats.

For as long as we could, we used the base at Guantanamo as a humanitarian sanctuary and a location for interviewing Haitian boat people to allow those with credible claims to be identified and brought to the United States to apply for asylum status. In May, however, when more than 13,000 Haitians were picked up, we were overwhelmed by the numbers. Moreover, we became convinced that the Guantanamo operation and the presence of U.S. Coast Guard cutters offshore had become a magnet -- causing more and more Haitians to take to the boats. In this circumstance, we were compelled to act to end or to reduce greatly the boat exodus.

One essential element of our policy is to safeguard human life. When the numbers of boat people began to exceed the capacity of our Coast Guard cutters to pick them up, we were forced to implement a practice of selectivity -- asking the cutter captains to decide which boats were sufficiently seaworthy to let sail on. Sooner or later a Haitian boat would go down and lives would be lost. Similarly, at some point the overcrowding at Guantanamo would pose serious risks to human health. These risks were clearly intolerable and unsustainable, and, on May 24, the President determined that the point of maximum capacity had been reached.

We faced an excruciating dilemma. Haitians want to come to Miami. To save lives we pick people up at sea. By doing so we strengthen the pull of the magnet for the United States. The magnet goes well beyond political refugees; most are people seeking better economic opportunity. The dilemma is magnified by the need to employ an embargo in our efforts to restore democracy, which adds to the economic pressures.

In these circumstances, recognizing all the down sides, we believe that it is imperative to end the magnet effect by returning all Haitians directly to Haiti. We will be able to continue to save lives by picking up those at sea. We will be able to process any Haitians who fear persecution at our embassy in Port-au-Prince, and we have spread this word widely. The embassy has been processing refugee applications since February with no interference from the Haitian authorities. The cumulative total of applications received by the Embassy is over 1,400 and more than a thousand others have expressed interest in the program. We are also monitoring returnees and working with both the International Federation of Red Cross and Red Crescent Societies and UNHCR to expand their presence in Haiti for this purpose. This monitoring plus our refugee processing provides an expanding means of protection within Haiti. We are hoping that the OAS-DEMOC observers will soon be able to arrive to expand such protection further.

This, of course, is not all we are doing for Haiti, nor is it the most important aspect of our overall Haiti policy. The only good answer to the dilemma of the Haitian boat people is to address the fundamental problem facing the entire Haitian population -- the need to restore democratic legitimacy. When that happens, Haitians can have hope for a better life without leaving their country. We and the OAS are doing what we can.

In the meanwhile, we are endeavoring to address the basic needs of the people. We have increased our humanitarian assistance programs, which total \$47 million and will provide food for over 600,000 Haitians and health care services to nearly two million. We have called on other nations to increase their humanitarian efforts. Fundamentally, however, the answer to Haiti's problem and the desire of its people for a better life can be found only in the political realm, through the restoration of constitutional government.

OTHER POLICY OPTIONS

The central fact about boat people is that they are on the high seas. They must be brought safely to shore. There must be a place on land to receive them.

A second fact about asylum seekers and migration phenomena generally is offering resettlement or asylum to any large group will cause even greater numbers to seek the same benefit. Any policy we pursue must be considered in terms of this potential magnet effect.

Taking these two criteria together, the need for a place on land and the avoidance of a magnet effect, the options available to the United States for Haitian boat people are

extremely limited: we could bring them to the United States, we could return them to Haiti, or we could find a third country which would allow the use of its territory for safehaven or at least for processing.

We have ruled out bringing any or all boat persons to the United States for our territory is the supreme magnet. It is precisely for the purpose of reaching the United States that most Haitians have gone out in the boats. When Haitians arrived spontaneously in Cuba, Jamaica or the Bahamas rather than reaching Guantanamo, they voluntarily returned to Haiti. So, too, have the great majority of those offered safehaven in Venezuela and Honduras. We are convinced that a program of large-scale entry into the United States, under any current or conceivable legal framework, would only ensure that thousands, tens of thousands, or even hundreds of thousands of additional Haitians would follow.

Over the past seven months we have strenuously pursued the third country option. Initially, when the numbers were small, several countries in the region offered to help (including Honduras, Venezuela, Suriname, Guyana, Jamaica, Belize, and Guatemala), but in no case did a country agree to accept more than 250 Haitians. Clearly, this is no answer when the pick-up rate is in the thousands per month. Hence, the problem we face in responding to the outflow of Haitians is quite different from the situation in Southeast Asia, or Africa, where there is an acceptance of shared responsibility for a regional problem.

We have also sought a solution through multilateral institutions, and we have strongly supported the diplomatic efforts of the OAS and UNHCR to orchestrate a regional plan. The United States and UNHCR are continuing to seek a regional solution. To date, however, there has been no success.

THE UN REFUGEE CONVENTION

Our policy decision to return Haitians picked up on the high seas without screening has raised concern about the consistency of our policy with the legal obligations of the 1951 UN Convention and the 1967 Protocol on the Status of Refugees. Let me assure you that the Department of State has approached this question with the greatest seriousness. Not only do we respect such treaty obligations as a matter of law and policy, we are the acknowledged world leader in refugee affairs. Both in support of the UN High Commissioner for Refugees and bilaterally, as necessary, we are constantly working with other governments in the cause of first asylum practice and refugee protection. We have not violated the Convention, and we have no intention of lessening our advocacy of its principles around the world.

Our position, simply put, is that the UN Refugee Convention does not impose an obligation on a state with respect to refugees outside of its own territory. This is not a new interpretation to fit the present circumstance. The negotiating record shows that this was the understanding of the Convention at the time it was negotiated.

I will not attempt in this testimony to iterate the full legal reasoning of the United States Government; it is on the public record in the several court proceedings of the past half-year. And the courts have sustained our position.

ASYLUM SEEKERS FROM OTHER COUNTRIES

The new policy is working. New boat departures have dropped to nearly zero in the past week. Since May 24 some 2,887 persons who have not been screened have been returned directly to Haiti. We have checked and monitored and no incidents of mistreatment have come to light. All returnees are being met at the dock by embassy officers. All receive a briefing in Creole and a handout which explains how to apply at the embassy for the U.S. refugee admissions program.

I think our critics are attacking us not so much because of what we are doing but because of the perception that we are treating Haitians differently than asylum seekers from other nations.

The first line of attack is to charge that our policy is racist. This is not true. In fact, we are admitting to the United States large numbers of Haitian asylum seekers -- over 10,000 persons have been approved for entry from Guantanamo under a more generous standard than is applied for refugee admissions or asylum processing in the U.S. Moreover, in the category of legal immigration, some 140,000 Haitians have been given legal status in the past ten years, which is the fifth highest nationality in the world. Only four countries sent more of their citizens here than Haiti in that period -- one of them Jamaica.

The second argument is that we treat Haitians differently from Cubans. This is decidedly true, but the anomaly lies in the preferential status accorded Cubans not in discrimination against Haitians. Cuban asylum seekers picked up by the Coast Guard are brought to the United States because they are fleeing a repressive, totalitarian regime. This is longstanding U.S. policy for which we believe there is bipartisan Congressional support. Otherwise our policy of interdicting intending illegal immigrants is not discriminatory; it applies to other Caribbean nationalities besides Haitians. Currently we are picking up and returning small numbers of boat people from the Dominican Republic.

Finally, and here the argument is particularly pointed within the fraternity of experts on refugee affairs, there is the contention that we are less concerned for the fate of the Haitian boat people than for the fate of Vietnamese boat people. Before reaching a conclusion, let us work through these two quite different cases.

-- In both situations, safe landing of boat people to safeguard human life is the overriding element.

For Vietnamese boat people, safe landing has required a commitment by the U.S. and other nations that the boat people would be resettled or would eventually return to their country of origin.

For Haitian boat people, safe landing is entirely dependent on the capacity of the U.S. Coast Guard to rescue people in unseaworthy craft and take them to land.

-- For Vietnamese boat people, each of the ASEAN countries, plus Hong Kong, has agreed to the use of its territory for at least temporary asylum facilities.

As stated earlier, this question of land to house boat people is a critical element. For Haitian boat people, no other country has been willing to offer its territory for a significant number.

-- For Vietnamese boat people there is a multilateral agreement among over 50 nations -- the Comprehensive Plan of Action (usually called the "CPA").

For Haitian boat people there is almost no multilateral support, despite seven months of effort.

-- For Vietnamese boat people, there are specific precepts on screening to determine who is a refugee.

For Haitian boat people, the U.S. instituted thorough screening procedures at Guantanamo. We applied more generous standards than the refugee test used in Southeast Asia; on the other side, there is not an appeals process.

As stated earlier, we had to cease screening of new pick-ups when the numbers overwhelmed our facilities. We have maintained our commitment to consider the claims of persons alleging a fear of persecution. We will do so at our embassy in Port-au-Prince and we have endeavored to facilitate access to this process.

-- For Vietnamese boat people the U.S. has opposed involuntary repatriation to Vietnam, even of the screened-out.

U.S. policy on Vietnamese boat people has been in place for over ten years and is well-known to Congress. In capsule form, we continue to oppose involuntary repatriation to Vietnam until conditions change in that country. In addition, the CPA agreement states that voluntary repatriation is the appropriate solution. Since over 22,000 persons have returned voluntarily and thousands more are in the queue, we believe involuntary repatriation is unnecessary.

U.S. policy on Haitian boat people has also been in place for over ten years. This policy recognizes that most Haitians are intending illegal immigrants to the United States and allows for their interdiction and return to Haiti. We have done so for over ten years with no evidence that returnees are persecuted. Since the coup in October 1991, we have returned some 22,000 Haitians. We are monitoring all over the country, tracking down specific allegations that are reported to us, and we have found no credible evidence that returnees are targeted for persecution.

CONCLUSION

This is what we are doing. In the cases of both Vietnamese and Haitian boat people we have put first and foremost the safety of people on the high seas. In both cases we have sought multilateral solutions. In both cases we have supported screening procedures. This was our policy on Haitians for seven months, but it could not be sustained. The unilateral U.S. program to offer safe landing and screening at Guantanamo became its own undoing. It became a magnet, drawing out more and more Haitians until eventually our first priority -- the safeguarding of lives at sea -- could no longer be assured.

We were forced to change our policy. We are returning Haitians directly to their country of origin without screening. We recognize that our decision might be misconstrued, and used to weaken international resolve to protect asylum seekers in other circumstances. We will work to counter that, carefully explaining the special circumstances of this case and the efforts we are undertaking within Haiti both to monitor returnees and process refugees. In these ways we believe we can sustain our support on behalf of refugees worldwide.

Thank you Mr. Chairman.

Mr. BERMAN. This hearing is jointly held by the International Operations and Western Hemisphere Subcommittees, so I think I would first recognize Mr. Torricelli for questions to the ambassador.

Mr. TORRICELLI. Thank you, Mr. Chairman, very much.

Perhaps, Mr. McKinley, you can describe to me in some detail how the procedure is now working to determine whether or not there is a threat and whether there is eligibility. Where are the interviews taking place, who is doing them, and how much time is being given to each individual.

Mr. MCKINLEY. Let me try to do that for you, Mr. Torricelli, to the best of my ability. Do you have in front of you this chart that gives the numbers? It is one of the four—

Mr. BERMAN. We don't have that.

Mr. MCKINLEY. Well, let me just refer to that briefly. The refugee processing is done at our embassy in Port-au-Prince.

Mr. TORRICELLI. Just so we understand, are people taken there directly when they are brought back?

Mr. MCKINLEY. Well, they aren't taken there, but some do go there.

Mr. TORRICELLI. I want to understand the full procedure. People are picked up at sea and brought back to Port-au-Prince to a common location. Are they then invited to go to the embassy at some point or do they go directly there?

Mr. MCKINLEY. They are invited to go. The way it works is this. They come from the Coast Guard cutters to the main dock at Port-au-Prince which is right across the street from the U.S. Embassy, and there they get off the cutters and are processed by the Haitian Red Cross. This is something that has been going on ever since the program started in 1981. And they are given food coupons and travel money, and their names are checked.

Both on board the cutters before they go ashore and then again while they are being processed by the Haitian Red Cross, they are informed of the option they have of applying for refugee status at the U.S. Embassy. This was done by creole-speaking consular officials of the U.S. Government.

It is explained to them exactly how that happens. Address, telephone number, and offers are made for transportation or escort if desired. Those Haitian boat people who wish to follow through are then taken to the consular general, which is about a mile away in a different part of town, and files are opened on them.

Mr. TORRICELLI. No matter when this boat comes back, this is done contemporaneous with the arrival?

Mr. MCKINLEY. That is right.

Mr. TORRICELLI. So if a person feels in genuine threat, can he say, one, I want an escort, and two, I want to go right now?

Mr. MCKINLEY. Yes, they can do that. The boats land in the morning. I don't want you to think this is a dark-of-night operation. They are scheduled arrivals. They come in during the morning hours.

Mr. TORRICELLI. And if it is found in the interview there is a potential threat or this person might qualify, what physically happens to him after the interview?

Mr. McKINLEY. The people who open files at the embassy, and there are 1,582 of them who have done that so far, that compares with, I think, 2,887 who have been returned since the decision of the 24th of May—

Mr. TORRICELLI. How many?

Mr. McKINLEY. I think 2,887. It is in these papers.

Mr. TORRICELLI. Did you say 2,887?

Mr. McKINLEY. Yes, that is right. These are the ones that have been returned since the new Executive order of the 24th of May—2,887.

The number of files opened at the consulate is 1,582. I don't want to lead you to think that the 1,582 are all necessarily part of the group that is returned. I mean, that is the cumulative. People have come in from other places, too. This is not a program just for, or I would even say principally for, boat people.

Mr. TORRICELLI. The thrust of my questions is concerning the safety of those persons who eventually may come to the United States.

When they are then interviewed, are they told to go home and wait for the mail, or are they then, from that point forward, under the protective custody of the United States?

Mr. McKINLEY. They are not under the protective custody of the United States. But in the screening which take place when they file the application, they have an opportunity to say if they think they are in any immediate danger. And, in fact, we have processed—

Mr. BERMAN. Could I ask—

Mr. McKINLEY [continuing]. In Port-au-Prince people who felt they were in danger and who didn't want to come to the embassy. So it has happened.

Mr. BERMAN. They have the opportunity or they are asked if they feel they are in immediate danger?

Mr. McKINLEY. They are certainly asked. They are certainly asked.

Mr. TORRICELLI. There seems to be some hesitation on this. This is the center of the controversy. The concern is, someone who is brought back to Haiti who has fled out of real concern for his life now arrives back in the country. You have established that he can then be given escort to a U.S. facility for his interview. So far, he is safe. Now in the interview it is established there is some real possibility that this person's life is in danger.

This is as far as we have gotten in this conversation. Is that person now released to the street until the time comes for him to leave the country, or from that moment forward is he safe under the protection of the U.S. Government until he leaves the country?

Mr. McKINLEY. I certainly take the direction of your question, Mr. Torricelli, and I think I am right in saying that this particular set of circumstances has not arisen. No one has said, Look, I am in immediate danger of my life, you have to protect me. We don't have that kind of a situation to deal with.

I think I can give you assurances that if an applicant stated credibly that he was afraid to leave, we would do what we could to protect him. But at this point it is hypothetical.

Mr. TORRICELLI. Are you testifying that no one who has left the country seems to indicate he feels he is in that kind of immediate danger of reprisals?

Mr. McKINLEY. It hasn't happened at our embassy.

Mr. TORRICELLI. I am not suggesting that is not valid testimony. I am just saying that is an extraordinary statement—when people are putting their lives at enormous risk crossing the water—that none of them has been motivated to that point by fear of political repercussions. I am not saying it is not accurate; I am just saying I am surprised to hear it.

Mr. McKINLEY. It is a fact, to the best of my knowledge, that so far, among these 1,582, no one has said, I need immediate protection.

There were a few instances, just let me clarify, when people—these are not returned boat people, but people who had been in hiding inside Port-au-Prince since the coup, learned through the message we spread on the network that the option of refugee processing in the embassy existed, and they made contact through intermediaries and on the phone and arranged to be processed in their point of hiding, and they were processed.

So we have done that. We have had instances—but these are not returned boat people, these are people who had been in hiding in Port-au-Prince. We have dealt with them in that fashion.

Mr. TORRICELLI. According to your statement concerning the people who have been returned, there have been no incidents where there have been problems while they were in Haiti. Would you give an idea of how thorough that survey has been; how many people you have tracked who have this degree of confidence?

Mr. McKINLEY. We have monitored at least 2,000 returned boat people.

Mr. TORRICELLI. And they have been without incident from government authorities, to the best of your knowledge?

Mr. McKINLEY. That is correct. The de facto authorities in Haiti have not, to the best of our ability to understand it, have not been interfering with returned boat people. In fact, I would go so far as to say that for reasons of policy, it makes some sense from their point of view, they have been deliberately keeping their hands off this population.

Mr. BERMAN. If the gentleman would yield—

Mr. TORRICELLI. Actually, I have concluded.

Mr. BERMAN. I think it is important to point out, people the embassy claims to have monitored and found no evidence of retaliation, are the people who were screened out, who were screened in Guantanamo, found not to have a plausible or arguable claim for refugee status and were repatriated on that basis?

Mr. McKINLEY. Yes, that is right.

Mr. BERMAN. Therefore, if the system in Guantanamo is working, the people who would not have come for reasons of well-founded fear of persecution would be least likely to be concerned about walking into the embassy in Port-au-Prince to get out, because they are not the focus of the regime's attention.

Mr. McKINLEY. That is a fair point. Now that we have the new policy, and we have had it only for a couple of weeks, I can assure you that the embassy will continue its monitoring effort. It has de-

voted a lot of resources to that, to checking on the well-being of these people who have been returned. So in due course we will have some facts and figures on that as well. But what you said is correct, Mr. Chairman.

Mr. BERMAN. Mr. Gilman.

Mr. GILMAN. Mr. Chairman, when we were in Haiti and interviewed a number of the human rights leaders, we were trying to pinpoint what sort of screening they actually did. Were they out in the field? Did they make extensive visits to those who were returned, particularly those far-flung from the Port-au-Prince area?

We found that our embassy was relying on reports coming back from Haitian people who were supposed to be sort of a monitoring network.

Are we still relying on that sort of a monitoring network?

Mr. MCKINLEY. Yes, Mr. Gilman, we are, but certainly not exclusively, and I believe I know the problem to which you are referring.

You know, in the early days of this crisis, after the coup last September 30, our embassy was drawn down. We sent dependents out, and nonessential personnel were sent out, and we got to a situation where the embassy was very thinly staffed.

Mr. GILMAN. Have we returned those employees?

Mr. MCKINLEY. We have. But I think it was that period, when the embassy was drawn down, when it didn't have resources to get around the country, where, because we had no other recourse, we relied very heavily on our network of missionaries and human rights activists and businessmen and others around the country.

As soon as we sent people back, particularly the creole-speaking consular people, we had the ability to do direct monitoring, and we have done a lot of direct monitoring all around the country. We have traveled in four-wheel-drive vehicles to every place you can go. We have used the Haitian Red Cross network of feeding stations, because as I mentioned earlier, food coupons are given by the Haitian Red Cross to returned boat people, and then at 17 different centers around the country distribution of foodstuffs is made. So we go to those centers and that is a good place to get leads on returned boat people.

An awful lot of time and energy has been spent following up leads. If we can't find the individual we are looking for, we can find a relative. If we can't find a relative, we can talk to the local priest. A lot of that has been done.

A very intensive, a very, I would say, sincere and energetic effort has been made by our embassy since the resources have been in place to do that, and we have just sent three additional people down to work on this in-country processing so as to free up our creole-speaking consular officers for more monitoring. So this monitoring effort is a very serious effort.

Mr. GILMAN. Are you convinced that relying on the monitoring effort suffices to give us a fair indication of what is happening?

Mr. MCKINLEY. I have a lot of confidence in that monitoring effort. I understand that there are some credibility problems, but we are not the only ones doing this. There are representatives of the International Federation of the Red Cross and the International Committee of the Red Cross, the two international Red Cross organizations there.

The U.N. High Commissioner for Refugees has a pretty constant presence there through temporarily assigned people and we have been talking recently with that U.N. agency about getting a permanent office there. There are OAS people there. There are a lot of nongovernmental organization people. Voluntary agencies are very active in Haiti. Indeed, that is the network through which we distribute all the humanitarian assistance we give. So it is not the embassy alone that is doing this. We feel we have got a pretty good sense of what is or is not happening inside the country.

Mr. GILMAN. Have you had any reports of recent data of any harassment or any problems with regard to the returning refugees?

Mr. MCKINLEY. No, we have not, Mr. Gilman.

Mr. GILMAN. So you have no reports at all of any violations?

Mr. MCKINLEY. No reports, no credible reports of violations have reached me, and as I said before, I think in response to the chairman's question, I do believe that the de facto government is consciously avoiding trouble with the returned boat people as a population. They don't want any trouble because they know exactly what would happen when the first instance of harassment or persecution to a returning boat person occurred.

Mr. GILMAN. What about the report that the HCR says it has difficulty monitoring or it cannot monitor?

Mr. MCKINLEY. Haiti is as described by Mr. Smith and Mr. Oberstar; it is hard to get around. This is not an easy country in which to work.

Mr. GILMAN. As far as you know, can UNHCR monitor?

Mr. MCKINLEY. UNHCR inside Haiti today does not have a heavy presence. To the best of my knowledge, they are represented in Port-au-Prince by one or at most two people who operate in Port-au-Prince. We have urged UNHCR, I think successfully, to beef up their presence inside, among other things, so that they could make more field trips and get out and around.

It is not impossible. It is difficult. One man in Port-au-Prince can't really have a good sense.

Mr. GILMAN. Essentially, UNHCR is not monitoring right now?

Mr. MCKINLEY. They are not—I think that is fair to say. UNHCR has—you could ask their representative here for exact details. UNHCR has made at least one effort. They sent a man in especially to do some monitoring and he joined others in trips around the country and did a very thorough investigation of a particular group of people that we were interested in.

But I think it is also fair to say that as a consistent day-to-day kind of thing, UNHCR has not had the presence in Haiti to really do a thorough monitoring job. I think they may in the future. We have been talking to them about it and they have expressed an interest. I think they will do it if they can.

Mr. GILMAN. Thank you. I see my time has expired. Thank you, Mr. Chairman.

Mr. BERMAN. Mr. Payne.

Mr. PAYNE. Yes. I was just where the chairman left off. Once you find that a person does, in fact, qualify for political asylum and you send them back home or something, what happens then? How do they ever arrive in the United States? How does it work?

Mr. McKINLEY. I will try to sketch that out for you. It is a two or three step process. The first step is making application and opening a file. The second step is an initial screening which is done by the consular officers of the embassy. People who qualify at that level, that is, who are able to demonstrate that they may have refugee characteristics, that they may have a solid case, that they are people we need to be looking at, are then referred to INS, because it is the Immigration Naturalization Service that has the authority to make decisions on refugees.

We have—I am just looking at my figures. We have, so far, referred 213 cases to INS out of that 1,582.

Mr. PAYNE. Over what time period?

Mr. McKINLEY. That would be during the entire life of this program started in February. But I think it has been increasing lately, particularly since the returned boat people have been offered an opportunity to plug into it.

I am told that inquiries about this program, telephonic and other, run at about 200 a day. So there is a lot of interest in this program inside Port-au-Prince. People do know about it and the phone is ringing and people are aware of this option.

Of the 213 that have been referred so far to INS, 45 have been approved and 115 have been rejected. So this is an ongoing process. It takes at least 3 or 4 weeks from start to finish. So far only 12 have actually departed for the United States, but, you know, there are medical screenings and there is the necessity to get sponsorship in the United States. So there is a lot of work that needs to be done before these people are brought in.

So it looks as though it is a little sluggish when you think that only 12 have actually left for the States, but it is a process which is working and if you look at it—if you compare the statistics, you will see that a fair number of people are being approved for this, and I think I would argue, Mr. Payne, that what this demonstrates is that there are people inside Haiti who are true refugees and need the protection of the U.S. Government and other governments can give them and we have a way of finding that out, but that this is going to be a much smaller group of people than the very large flood that ended up in Guantanamo, of which 30 percent, because it wasn't a thorough kind of screening, it was just a sort of, "gosh, is this guy's story at all credible," those people were allowed to go on in.

Mr. PAYNE. Were those original people from Guantanamo, when they came directly to the United States or are they still being processed?

Mr. McKINLEY. I have got a chart on that too.

Mr. PAYNE. So far though, we have got 12, 12 whole people.

Mr. McKINLEY. That is through the embassy process. The ones through Guantanamo, let's see, screened in and brought to the United States, 8,163. Those are ones that have arrived in the United States. Screened in total, including those that are still waiting for population, 11,062 as of yesterday. That is 11,000 people who, during the course of this crisis, have gained entry into the United States to apply for asylum.

Mr. GILMAN. Will the gentleman yield? What percentage is that of the total number?

Mr. McKINLEY. Thirty-two percent.

Mr. GILMAN. Thirty-two percent have been screened in?

Mr. McKINLEY. Right.

Mr. GILMAN. Thank you. I thank the gentleman.

Mr. McKINLEY. That is the percentage of those who have been screened in. There are others who are not screened, either because they came after the 24th of May cutoff or because they are still waiting for screening on Guantanamo, but the figure is 32 percent.

Mr. BERMAN. Just on Mr. Payne's point, so 11,000; 12 of whom came through the embassy program.

Mr. McKINLEY. No, the 12 are in addition to this, but you have to wait for this to work. It takes——

Mr. BERMAN. 11,012; 12 of them came from the embassy program.

Mr. McKINLEY. I am not fighting your basic point. Fewer people will get in through the embassy process than through the Guantanamo process because the embassy process is full refugee screening. That is, people have to demonstrate to our official that they qualify under the convention, that they have a well-founded fear of persecution, that they have got a case which they can make, they can prove and we can accept, whereas in Guantanamo, really all it took was a credible story, which we were not in a position to check. If it sounded plausible, then they were allowed to come to the States to pursue their asylum application and that is what they are doing.

Now, what you have to do then is compare the number of people in the States who eventually get political asylum with those who are working through the embassy at Port-au-Prince and then you can have an apples and apples comparison. Right now we don't.

Mr. PAYNE. Let me ask a couple quick points because the bell has rung, I just wondered, you were mentioning when we talked about the fact that our policy tended to be race-based and you denied that. You are saying that about 10,000 Haitians came to the United States during the past 10 years?

Mr. McKINLEY. 10,000 in this crisis. In fact, I was understating it. I was talking about the 11,062 who came during this crisis, but over the 10 years it is 95,000.

Mr. PAYNE. And you said there are more Haitians than Cubans, right?

Mr. McKINLEY. That is right.

Mr. PAYNE. Then things are worse in Haiti than in Cuba?

Mr. McKINLEY. Well——

Mr. PAYNE. Well, that is an objective question but I understand—my point was—the point—I was proving your point and I guess you might be proving my point here but it is probably a little more difficult to get out of Cuba than Haiti also. You can't go to downtown Havana—downtown Cuba and apply to come to the United States.

Mr. McKINLEY. Yes, you can, actually. Havana is one of the four places where we operate an in-country refugee processing program.

Mr. PAYNE. I had a couple other questions. I was wondering about the Deputy UNHCR Commissioner that was here recently and I wonder, did you meet with him when—I think he just left.

What was his feeling on the U.S.' position of denial of first asylum to Haitian refugees?

Mr. McKINLEY. I did have meetings with Doug Stafford when he was here last week and I accompanied him to meetings with other officials of our government. The interpretation that the UN High Commissioner for Refugees has put on the applicability of the refugee convention is different from the interpretation of our own government and, I will say, most sovereign governments.

The UNHCR would like to see the refugee convention apply and be self-enforcing, if you will, around the world, any place, including outside the territory of the sovereign government. We have never accepted this position, including at the time the convention was being drawn up in 1951 and at subsequent stages in its adoption by the U.S. Government and its incorporation in U.S. law.

This has nothing to do with the Haitians. This far predates the Haitian crisis. We have always argued that each sovereign government has to be able to decide how to apply the convention and is committed to its application on its own territory but not necessarily all around the world. This is, as you can well imagine, an important point for us in our embassies, on our bases, on our vessels. We have always held that we could not be legally required to abide by our convention commitments outside our own territory.

Now, as a matter of policy, we have often chosen to do that. But there is—there is a difference of interpretation, and as I am sure you know, the U.S. Government's interpretation of that has been upheld by our court system and in other ways. So that is the way we see it. It is a little different from the way Douglas Stafford sees it.

Mr. PAYNE. We signed the convention, right?

Mr. McKINLEY. Absolutely.

Mr. PAYNE. Why did we sign it then if we didn't agree with it? You take Portugal that took 1 million Angolans in a country of 9 million people when they had that crisis. If you take Malawi with a population of 4 or 5 million, they took 1.2 million Mozambiquans. That's like us taking 70 million Haitians, you know.

So in other words, we have a very restrictive policy. We signed an accord that we don't believe in. It probably would have been better not to sign it at all just like we are doing down in Rio today than going to sign something where we don't agree in principle with that again.

But I know you don't totally make policy, but you are as close as I can get to him. We better go on—

Mr. McKINLEY. Let me comment on that because I do have something to say about refugee policy and I don't think you have characterized our position on the convention accurately. I think we do support the convention.

Mr. BERMAN. You think—you come under the convention?

Mr. McKINLEY. On our territory.

Mr. BERMAN. The only question to add here though is, the executive branch, when they made the U.S./Haiti agreement back in 1981, where they went through this process of interdiction, extended the application of the convention at the time. At least for purposes of the Haiti interdiction program, we accepted it.

Mr. McKINLEY. That is correct, as a matter of policy, but not—

Mr. BERMAN. Well, the lawyer said—I mean, that was the legal conclusion. I for one and Mr. Goss wants to ask some questions. We have a vote coming up. Mr. Payne, you are welcome to come back too and we can continue this. There are some—and basically what I hope to do is come back, finish the questioning, rant for a little bit and then hear from our next panel, but I have to—the hearing can go on as long as it wants to.

I have to leave when we vote on the final passage because I have to catch an airplane after that, so we have about an hour after this vote to do all of that.

[Recess.]

Mr. BERMAN. We will reconvene. When he returns, it is Mr. Goss' turn to question, but if no one objects, I will begin some questioning in the meantime.

Mr. MCKINLEY. Mr. Chairman, could I say something for the record?

Mr. BERMAN. Sure.

Mr. MCKINLEY. My able staff informed me during the break that I may have left a false impression with you on the question of escorting returning boat people from dock side to the embassy. The possibility exists, and it has been used, but it is not the normal thing.

Mr. BERMAN. The escorting?

Mr. MCKINLEY. The escorting.

Mr. BERMAN. I was surprised when I heard it, but we should let Mr. Torricelli know that when they are brought back to the main harbor at Port-au-Prince, they are, absent some special demonstration, made to go wherever they are going to go?

Mr. MCKINLEY. Well, I gather that I left earlier the impression that somehow escorting to the embassy was the regular, normal thing.

Mr. BERMAN. Yes.

Mr. MCKINLEY. And that is not necessarily the case. I think a minority of returned boat people want to go to the embassy and most of those find their own way because they are given the address and phone number and they may have other things they want to do first.

If they needed to be escorted, then they could be escorted and we have escorted some in the past, but it is not part of our normal, everyday procedure. I don't want to leave you with the impression that people get off the cutter, are processed by the Haitian Red Cross and then right away get on a bus and are taken as a group to the consulate general. It doesn't work that way.

Mr. BERMAN. Well, we should make sure that the Members who were here when you—when I at least got the impression that they were escorted back to the embassy, and particularly Mr. Torricelli who asked the question, will be advised otherwise.

Another of the areas I have a concern: When you say that in a minority of cases, where it seemed this is where they wanted to go, we would take them back to the embassy; unless you have a process, everything is about what options people think they have. There are not consulate officials and INS officials on these Coast Guard cutters. I have no doubt that if in Haiti everybody thought they could get a full-scale asylum hearing and not have any chance for

retaliation if they met the definition under U.S. refugee law, that you might have a far greater number of people approaching the embassy than you now do.

The Voice of America, as I understand it, is spending a lot of time advising people in Haiti about our interdiction and repatriation policy. It is not spending a lot of time advising people about our refugee law and the basis on which they can seek to qualify for refugee status in a country.

Mr. MCKINLEY. On that, Mr. Berman, the Voice of America has always carried the message of in-country refugee processing, so I do really believe that the message is out there and I don't mean just in Port-au-Prince. I mean throughout the country via all these different networks that exist, people know that if they think they can qualify as refugees, they can apply at the U.S. Embassy and get a hearing. I do believe that.

Mr. BERMAN. I will just respond to that. Then I will turn it over to Mr. Goss. Every time—in every other situation, whether it is the Soviet Union, Cuba, Vietnam, Romania, in-country processing is OK as an alternative, but it has never been the exclusive option. It has never been viewed as the reason to, violate international law, and make a massive deviation from U.S. refugee law by refusing to screen people outside of Haiti.

It is going to be hard to persuade me that people—the biggest test of all is that 32 percent of the people are screened in when they reach Guantanamo and 12 individuals in Port-au-Prince. There is not much more to say about it than that.

That means one of two things. Either the asylum offices that INS uses to screen are far more competent to ascertain an arguable case for refugee status and asylum than the consular officials in the State Department, or there are a far larger number of people who are willing to take their chances, political refugees, take their chances on those boats in the hope that they will be picked up and given some chance to make their case, than there are people who are willing to risk getting to our embassy and what will happen to them between the time they have the interview and the time they actually qualify.

Mr. Goss.

Mr. MCKINLEY. I would just say, Mr. Chairman, that there is another explanation, and that is that on Guantanamo, the test applied was a much less rigorous test, simply a credible claim which was not checked out, which couldn't be checked out, which was the result of a 30 to 40 minute interview and if it added up and if the person had some details and it sounded like, OK, this guy might have a shot at asylum, we ought to let him try, that is a much lower hurdle to get over, and so it is not surprising that more people did.

The more so since if you are in Guantanamo, you are not in Haiti. You don't have a way to check things out. You can't pick up the phone and call and check anybody's story. If you are one of these brand new asylum adjudicators that INS put in, you may never have been in Haiti. You don't know how to judge a story. By the way, it is the same people who make the decisions both places. It is the same organization, INS, the same adjudication process, but when it is done in-country—

Mr. BERMAN. INS has asylum officers in Port-au-Prince?

Mr. MCKINLEY. Yes. They legally are the ones who make the final decision on refugees. They are the ones who say yes or no, the same people, but they are in the country and they can check all these stories and this is a 2 or 3-week, maybe 2 or 3-month long process in which you can weed out the frivolous claims which maybe at first glance are credible but which don't stand up to investigation. It is a different process and you shouldn't be surprised to find that the outcome is also different.

Mr. BERMAN. Very, very, very different. The very distinguished gentleman from Florida is recognized.

Mr. Goss. I thank the very distinguished chairman.

I would like to follow a line of questioning that was suggested by your testimony, if I could. It is a little different than what we have been doing. You have some experience in Haiti and the history of Haiti, you know what has been going on in the country.

You have the situation in Haiti today in terms of threat to your human rights, threat to yourself, your person, not including the economic process necessarily. Are we a lot better off or the same as you compare going back through the various periods of Haitian history? Let's say you go back to Papa Doc's time, Papa Doc, Baby Doc and then all the other things in between.

I can think of incident after incident after incident of just outrageous terrorism, violations of sanctity, let alone rights, hacking of people, necklacing of people, unspeakable types of brutality that have gone on. Is it worse today than in other periods?

Mr. MCKINLEY. That is a hard question to be precise about, Mr. Goss.

Mr. Goss. An impression will do.

Mr. MCKINLEY. I will give my impression as to Haiti. I think you have correctly identified some endemic human rights problems of Haiti which I consider to be structural problems: the fact that there isn't any law and order and generally hasn't been, the fact that the justice system doesn't work, the fact that there is a lot of recourse to vendettas and to popular justice.

These are things that go on and have gone on whoever is in power in Port-au-Prince. This is just the way things are in Haiti. There were a fair number of those instances even in President Aristide's period. Things didn't automatically get all that much better.

So there is a built-in endemic problem which I consider to be based on the lack of democratic institutions and a justice system. I think you can think of times in the recent past when things were worse, particularly the Papa Doc era, for example, when there was a well organized, more or less efficient, fairly ruthless mechanism of oppression, the so-called Ton-Tons Macoutes. When they were there and running things, then it would be possible to talk about systematic oppression and systematic built-in human rights abuses.

I think what we have today is at a lesser level of organization and sophistication than that. I think it is more random, more part of the chronic dilemma of Haiti and less a manifestation of some form of totalitarian control. That at least is my impression.

Mr. Goss. Thank you. Well, under those circumstances, it is not surprising that there have been a lot of people leaving Haiti and

retaliation if they met the definition under U.S. refugee law, that you might have a far greater number of people approaching the embassy than you now do.

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Mr. Goss. Thank you. Well, under those circumstances, it is not surprising that there have been a lot of people leaving Haiti and

we are quite often asked if we open the doors, how many people from Haiti would come to the United States and some would suggest the answer is just about everybody.

I don't know the exact number of people who have migrated from Haiti to the United States, either as refugees, illegals or immigrants over the last 10 years. Maybe you know. It is a big number.

Mr. McKINLEY. The figure that we normally cite is 750,000 Haitians living in the United States. It could be more than that. This is not an exact figure because it does include undocumented Haitians as well.

Mr. Goss. We realize that is a big number most likely but let me just ask this. We have a lot of testimony about the prescreening and the screening process, and these people have ended up in the United States and of the 8,000 plus whatever number we are going to agree on, where have they primarily ended up? Where do they get delivered?

Mr. McKINLEY. Well, the reception system is operated through voluntary agencies who look for sponsorship. The sponsors can be relatives, they can be church groups, they can be community organizations. They tend to be concentrated in areas which already have Haitian communities.

Mr. Goss. Can you identify those areas?

Mr. McKINLEY. It means Florida, it means New York, it means around the Chicago area, but also other places. Any decent sponsorship will be accepted and people do get spread out, but they tend to concentrate in areas that already have Haitian communities.

Mr. Goss. Is there any follow-up in this screening? We know that in some cases that these people are supposed to go through more than just the prescreening. Once they get here on the basis of possibly having a case, we understand that they are basically free to go about their business until we get to that part of the process. How is that follow-up process working?

Mr. McKINLEY. That is connected with the voluntary agency's sponsorship. You are quite right, Mr. Goss. These people are admitted in order to pursue a claim for asylum and one of the duties of the voluntary groups who arrange the sponsorship is to get them started on the asylum process.

That means filling out the forms and making the application, and this is a responsibility which they take seriously and it is a fairly heavy responsibility. A lot of legal work, a lot of manhours go into that.

Mr. Goss. Mr. Chairman, I know my time is up. Can I keep going on a bit?

Mr. BERMAN. Yes.

Mr. Goss. Do you have any kind of idea what kind of percentage we are looking at for successful followup to get those applications in and get the process completed?

Mr. McKINLEY. I can't give you any statistics on that. It is too early in the process. I think you will find that most people admitted as asylum seekers will go ahead and file the claim, but it takes a long, long time for these claims to be advocated and there are many other asylum seekers in the country as well.

There is a bit of a backlog and it takes a while to work through that. I don't think we have any statistics at all on Haitians produced by the present crisis.

Mr. Goss. Assuming some day we will and based on your knowledge of what we have now, do you think it is a fair statement to say the United States of America has received a fair proportionate share of people leaving Haiti for whatever reasons over the past decade?

Mr. McKINLEY. Oh, I think so, sure.

Mr. Goss. Is there another country that has even come close?

Mr. McKINLEY. In terms of absolute numbers, I am sure the United States has more Haitians from recent outflows than any other. Of course, in terms of percentages, it looks a little different. Some of the countries in which Haitians end up are very small countries, like the Bahamas or even the Dominican Republic next door, but certainly in absolute terms, yes, I am convinced that we have accepted many, many Haitians. The United States is where they want to come after all, and I think on the whole, they have established themselves very successfully here.

Mr. Goss. Are you aware of any policy that says we are not accepting any more Haitians because they are Haitians?

Mr. McKINLEY. Absolutely not.

Mr. Goss. You mentioned in your testimony that there was a dwindling number of people leaving the shores of Haiti in these unsafe boats. Can you tell me again what the number has been over the past week or so or 2 weeks? And give us a statistic.

Mr. McKINLEY. Let me see. Very, very small. I think we had—since the 24th of May when the new policy went into effect, we had—we have had a total of 2,887 Haitians interdicted, but almost all of those were interdicted in the days immediately following the new Executive order and the population consisted of people who told us when they got to the dock in Port-au-Prince that they didn't know there was a new policy.

In other words, these are people who left expecting they would get to Guantanamo. There was even one day, the 29th when, according to my chart, we had over 1,000 in a single day. But once the word spread, it dropped off to just about zero, and in the month of June there have been only 4 vessels and 258 Haitians interdicted. In the last 4 days there have been zero.

So, in fact, I think what happened was it took a while for word to spread that Guantanamo was no longer there. It took awhile for the magnet effect that I mentioned to get turned off, but once it was turned off, the departures went quickly to zero, and if you understand how it works, you can understand why. Because people do have to sell up and pay a fair amount of money for boat passage and they are not going to go if they know their chances are zero.

Mr. Goss. Mr. Chairman, I have got two more questions. Is that all right? You have been very generous, thank you.

Do we have now a situation of our Coast Guard steaming around the windward passage looking for people? What is the situation with our Coast Guard now? Have we pulled back some of those cutters? Are we primarily involved in resolving the Guantanamo transportation problem? What is the situation today?

Mr. McKINLEY. Today there are nine Coast Guard cutters operating in and around Haitian waters. Of those, it appears that five are principally engaged in shuttling back and forth between Guantanamo and Port-au-Prince, returning people from Guantanamo. Four are on patrol duty in the windward passage and in the waters north and northwest of Haiti.

Mr. Goss. With those four that are on patrol, do they hale or are they haled? Who is the proactive party in the situation now?

Mr. McKINLEY. They approach.

Mr. Goss. OK, so they are doing the haling?

Mr. McKINLEY. They are carrying out their instructions in the same fashion they have been doing it really for 11 years I think. There is also an air asset element to this. Patrolling is done from the air.

Boats are spotted, a cutter is radioed and it goes to make the inspection. If the boat is unseaworthy, as almost all of them are, if people look to be at risk, then they are picked up.

Mr. Goss. Thank you.

Mr. McKINLEY. As I say, this has not happened for the last 4 days and it hasn't happened very much in the month of June.

Mr. Goss. One last thought on that you suggested. If everything worked according to the pace it is working now, when would Guantanamo be evacuated and everything back to where it was before all this started?

Mr. McKINLEY. I think we are expecting to have the bulk of the Haitian boat people out of Guantanamo in another 4 to 6 weeks.

Mr. Goss. Thank you very much, Mr. Chairman.

Mr. BERMAN. Is that what all this is about? Getting Guantanamo back to where it was? Is that the major motivating factor for this very significant change in policy?

Mr. McKINLEY. No. I would say that the main motivating factor is to find a way, with all the disadvantages, of turning off the magnet, to find a way to keep people from streaming out of Haiti, taking advantage of the existence of Guantanamo to come to the United States. That is why we had to do it. It is not about the presence of a certain number of people in Guantanamo.

Mr. Goss. Mr. Chairman, on that point, I think it is worth noting that there has been some testimony in other committees that things are getting pretty grizzly in Guantanamo as the warm season comes, so there was some element of urgency or there was, I am not an expert on that but I have heard testimony in the U.S. Congress on it.

Mr. McKINLEY. There are some factors and I think the most recent one that worried the commanders on Guantanamo was the imminence of the hurricane season. If a hurricane had struck this tent city on the air field where people were living, it could have been bad.

Mr. BERMAN. Part of the problem is that when we talk about it as the magnet effect, we sort of predecide the question. The magnet is the lure of the better life in America. That is the magnet. That assumes economic motivations.

I don't know what term to use for the—the electric prod that is pushing people out of Haiti because of the repression and all the political problems. The fact is, and I don't mean to say this in—you

know, in the worst sense that it sounds, but the greatest way to deal with this magnet is just to shoot all the people on the boats, then no one will take a boat out there.

The certitude of what will happen to them then versus the likelihood or—of what is going to happen to them if they stay, or the probability, or the real possibility, or the well-founded fear of the possibility of what will happen to them then will outweigh it.

But I can ask just two questions here and then I am going to ask the next panel to come up. Since the 1981 U.S./Haiti agreement explicitly provided for the nonreturn of Haitians determined to be refugees, does the new policy not constitute abrogation of the agreement? And if it does, on what legal basis can the U.S. intercept Haitian vessels outside U.S. territorial waters?

Mr. McKINLEY. My understanding of that question, Mr. Chairman, is as follows. I will ask my legal advisor to correct me if I get this wrong, but the exchange of notes that constitutes that 1981 agreement contains a reference to our ability to screen the population for potential refugees. It refers to—

Mr. BERMAN. You mean it makes the agreement not to return refugees conditioned on our ability to screen them?

Mr. McKINLEY. What it says, and Michele, do we have the text? Do we have the text here? I would gladly read it to you. But what it says to the best of my recollection is that the U.S. reserves to itself the intention not to return refugees.

Mr. BERMAN. It is understood that under these arrangements the U.S. Government does not intend to return to Haiti any Haitian migrants whom the U.S. authorities determine to qualify for refugee status?

Mr. McKINLEY. Right. That is my understanding. This is an expression of our intention, of our policy at the time. This is not something which binds us in a legal sense.

Mr. BERMAN. In other words, it doesn't abrogate the agreement because the other party isn't damaged by our contradicting our provision in that sense?

Mr. McKINLEY. I think I would say that, yes. I think that would—that is what the lawyers would tell you, that the agreement remains in force until abrogated in accordance with the terms of the agreement.

Mr. BERMAN. So that—

Mr. McKINLEY. The fact that we changed our intention doesn't affect the legalities of it.

Mr. BERMAN. We memorialized something which we have now just—intent which we have reversed. Then my final question is this, your testimony talks about—our recognizing that this action can be misconstrued, but that we can still internationally work to protect asylum seekers. Why isn't every other nation going to justify their failure to protect refugees in terms of intolerable burdens in special circumstances?

What is the real long-term implication of what we are doing here in terms of refugee policy?

Mr. McKINLEY. Well, I think in honesty, I have to admit that we will hear, just as some of the early panelists said, we will hear from other governments about this decision and they will attempt to use it to justify actions which it would be our policy to oppose.

I think we will try, and I hope we will succeed, to look at each of these crises separately and do the appropriate thing in them. We haven't gotten into the comparison of Vietnam to Haiti, but I think I could show you, and I think in the testimony I tried to put it in writing, that those two cases are, in fact, quite different and that what apparently is a contradiction on the service is not when you look at what we are actually coping with on the ground, and I think that is what is going to happen in the case of Malawi, with Mozambique, or Bangladesh, or in the other refugee crises with which we are forced to cope.

I think we will be able to go to those governments and say, look, this is the convention, this is the norm of international behavior, this is what it requires you to do, we are here to help you together with UNHCR to cope with these problems and to resolve them in an acceptable and humanitarian fashion and I think it is going to work.

Cynics will say, hey, yes, you tell us to do one thing and you do something else yourself. But I think we will succeed through a strong refugee support policy, which is a thoroughly bipartisan policy which the Congress is very strong on and has many friends and advocates in the executive branch as well.

I think we will succeed in coping with this.

Mr. Goss. Chairman, will you yield for a moment?

Mr. BERMAN. Sure.

Mr. Goss. On one point I am not sure. I think there may be a wrinkle there and I may not understand it because I am not an amnesty lawyer and I think you have to reach some of these agreements. We have determined in cases of these people leaving Haiti whether they are eligible or not to come to the United States?

Mr. BERMAN. No.

Mr. Goss. They are involved in a humanitarian search and rescue mission of the Coast Guard to save them from drowning.

Mr. BERMAN. Like we were in 1981 when we undertook—we got the agreement to interdict and undertook the obligation to screen.

Mr. Goss. Correct, and we are meeting the obligation. We are doing it slowly at the embassy in Port-au-Prince rather than in mass volume in a tent in Guantanamo, but I don't think we have abrogated the treaty.

As I may say, I might not be able to defend this because I am not an attorney but it seems to me there is at least a case to be made.

Mr. BERMAN. It is a fundamental departure from our position that we would screen individuals picked up at sea. In-country processing cannot justify that departure. If that is the alternative, it would be a massive departure from the way we treat refugees now.

But the next panel I think will probably speak to this issue. You mentioned one clarification of an earlier answer. I want to make sure there isn't a need for another one.

As I understand it, the INS trained asylum officers who are doing the screening in Guantanamo are not doing the screening in our embassy, they are only adjudicating the cases screened by the consular officers. Is that a more accurate reflection of—

Mr. McKINLEY. That is right. The final decision is INS', the INS adjudicator.

Mr. BERMAN. INS only makes final decisions on those people that the consular people screen in. In Guantanamo INS does the screening as well as the final decisions.

Mr. McKINLEY. Well, there is no final adjudication. But you are correct. The initial cut at the embassy in Port-au-Prince is by the consular officers who then refer to INS, that is correct.

Mr. BERMAN. All right. Thank you very much, ambassador. I appreciate your coming.

Mr. McKINLEY. Thank you, Mr. Chairman.

Mr. BERMAN. There really are many more questions but the time is so short.

Mr. McKINLEY. We will be glad to deal with all of the questions, if you want to send them over.

Mr. BERMAN. Our next panel, Rabbi Haskel Lookstein, Professor Harold Hongju Koh, and Arthur Helton. I don't know which of the three of you has the earliest plane and if any of them are earlier than mine, but I will let you guys work that one out.

STATEMENT OF HAROLD HONGJU KOH, PROFESSOR OF LAW, YALE LAW SCHOOL

Rabbi LOOKSTEIN. We have agreed.

Mr. KOH. Thank you, Mr. Chairman.

Mr. BERMAN. Professor Koh is a Professor of Law at Yale Law School and your testimony will be included in the record and it would be good to summarize if you would, and to focus on the key points and on responses to things that may have come up in our previous exchanges with the ambassador.

Mr. KOH. Thank you, Mr. Chairman. I specialize in international law. In March, along with my students and four co-counsel, I filed a lawsuit called Haitian Centers Council versus McNary which is currently pending in the Brooklyn Federal Court and also in the U.S. Court of Appeals.

Let me do three things. First, quickly describe our lawsuit; second, explain how the shift in policy on May 24 is not only lawless, but also mindless and heartless in its impact on real people, our clients; and third, clarify how this bill might help address the situation. In the process, I will address what I think are optimistic answers by Mr. McKinley. As a lawyer who believes that contracts and treaties are binding, I find his ability to resolve contradictions between words and actions something that I wish I could do as easily.

Let me first describe our suit. It involves two parts, a right to counsel case and a case about nonreturn. The first part, the right to counsel case, we brought claiming that several thousand Haitian refugees that had been screened in had rights to attorneys on Guantanamo.

In response for filing that suit, the Justice Department requested that we post a \$10 million bond and moved against us for sanctions for filing a frivolous lawsuit. Despite that, we have nevertheless gone on to win a preliminary injunction.

Mr. BERMAN. Say that one more time.

Mr. KOH. In response to our filing a suit to say that lawyers have a right to talk to their clients, we were asked to post a \$10 million

lieve that Judge Johnson misunderstood that precedent. For that reason we have taken an expedited appeal in the Court of Appeals which will be heard, we believe, later this month.

We should point out that the interpretation that the government is asserting that these laws don't apply extraterritorially is not accepted by the UNHCR. UNHCR filed a brief on our side, noting that the government has reversed an interpretation they themselves adopted for 10 years and then reversed after they had been sued.

In our view, the policy is not just lawless, it is mindless and heartless. It is mindless because on the one hand our foreign policy is to condemn the regime and try to strangle it with economic sanctions, while our immigration policy to send people back to that regime as fast as we can. The magnet argument has been used by the administration in every possible way. In the beginning they said the open seas were the magnet. Then they said court orders created a magnet so they asked appeals courts to stay lower court orders. When people kept coming, they said the right to counsel was a magnet. Then they said the Coast Guard cutters themselves were a magnet. They said the pendency of litigation is a magnet. We heard today that Guantanamo is a magnet. We believe that it is possible that there are "push" factors, not "pull" factors that are working here, and that maybe they should think about turning off the propeller.

Mr. BERMAN. That is what I was thinking of before.

Mr. KOH. Turning off the propeller rather than the magnet. They argue that we have problems with our U.S./Cuban relations, so that Cuba might terminate the agreement, but if they look at the agreement with Cuba for the lease of Guantanamo, they will see that it can't be terminated without our consent.

The monitoring program that they talk about is mythical. As you know, they do not interview the people that are in hiding. Mr. McKinley in a deposition that we took in our own lawsuit was asked—

Mr. BERMAN. I must interrupt. They can have the most wonderful monitoring in the world and be totally accurate in the notion that returnees are not being persecuted because they are returnees. That doesn't deal with the fact that some of those returnees, when you don't screen them, might be refugees. That will never say—they will never say—there is no persecution in Haiti, that there isn't repression, that there aren't people that have well-founded fears of persecution. So if that universe of people is not excluded from the returnees, then it could be true that they are not being persecuted because they are returnees, they are being persecuted because of what they did before they left.

So as to this part of the policy, as opposed to other aspects of the policy, I mean as to the new change in policy as opposed to earlier practices, the monitoring thing just isn't really relevant.

Mr. KOH. There are numerous points to make. Let me just make a number of them. The monitoring is not going on with regard to screened-in repatriates. It is not going on in the countryside. It is not going on for people who are in hiding.

The screening is extremely cursory. People are not interviewed in private. They are interviewed in the presence of others, includ-

ing section chiefs. And the questions that they are being asked are by the very people who sent them back. The question is: Under those circumstances, would you tell someone who had just sent you back to face persecution the truth about the situation with regard to you?

Now, this is not a hypothetical situation. It involves—let me tell the story of two of our clients, very quickly. Mr. Bertrand and Mr. Remy, these are pseudonyms we use for their own safety. These are people we interviewed and counseled in Guantanamo during the course of our lawsuit. Both are political activists. Both were persecuted after the coup. Mr. Bertrand's closest relatives were killed by the Haitian military. They both fled Haiti last year, were brought back to Guantanamo, and screened in.

Contrary to the notion that Guantanamo is a sanctuary, they were subjected to prison-like conditions, they were denied all right to communicate with the outside world, and summarily punished. So they formed a group of political activists who requested to retain us as their lawyers.

In February of this year, they were promised that they would be given formal asylum proceedings with lawyers on Guantanamo. In March, the claim was made in the court that all they deserved was de facto asylum proceedings without lawyers. Then, in April, they were returned without any proceedings altogether, even they they had been screened in.

And by May, they were told that all they had access to was an embassy asylum process which they believe would be suicide for them to pursue. They describe the situation of people being "escorted" to the U.S. Embassy. When these people were returned to Haiti, they were "escorted" off the boats at Port-au-Prince with fire hoses. One of them was immediately fingerprinted. They were spotted by Haitian authorities who appeared with them at their house, beat them savagely, left one with a fractured arm, and both are now in hiding. If the old policy were still in effect, they would flee tomorrow, but since they will not be screened under the new policy, they must remain in hiding, because otherwise they would be returned again into even more dangerous situations.

Embassy processing is not a viable option for these people. To do this, they would have to leave their place of hiding, pass numerous roadblocks, enter the heavily militarized city of Port-au-Prince, go to the extremely dangerous area around the embassy and consulate, present and identify themselves as asylum seekers to the Haitian police, even to get into the embassy, engage in highly adversarial proceedings with U.S. officials, and repeat this process several times.

They embassy has a substantial backlog of cases. Twelve out of 287 have been brought to the United States at this point. It is not surprising that this is not just "a little sluggish." It is not an option. If you don't have that kind of time to wait, you won't come. That is why fewer than a hundred people have gone to the embassy.

Finally, the total quota for Latin America and the Caribbean is only 3,500 at the present time, and that will be quickly exhausted.

Let me finally conclude by speaking of the proposed act and the three important things that it does. We applaud Congress' effort to

counter directly through legislation a new administration policy that encircles Haiti with a floating Berlin Wall and pushes the interdicted Haitians back to their persecutors.

We also believe the bill is an important reaffirmation of our commitment to the U.N. resolution, and that is why the important words in the bill are that we "reaffirm" that these commitments, apply outside the United States.

Third, we believe that it recognizes the importance of fair procedures, and procedures according to internationally recognized standards which ensure an individualized determination that someone is or is not a refugee.

The important point, Mr. Chairman, screening is not an option that can be pursued—

Mr. BERMAN. You are speaking about the Solarz bill here?

Mr. KOH. Yes. Screening is not an option that can be pursued at our convenience and then dispensed with when it becomes difficult. The question is not whether we have taken in our fair share of Haitians. The question is, are people coming who have well-founded fears of persecution? If they are, we cannot return them, much as we might like to.

Let me just close by saying our policy is really only the most recent and egregious event in a series of lawless acts over time. This policy offends two principles. First, this is a nation of law and not individuals. Secondly, this is a nation built by refugees. We don't return people to conditions of political persecution. Enactment of legislation is necessary to reaffirm these principles. Action is urgently required. Human rights and lives depend on it. It is not something that can wait until after summer recess or until after the election.

Thank you.

[The prepared statement of Mr. Koh follows:]

Statement of
HAROLD HONGJU KOH
 Professor of Law, Yale University
 On
THE NONREFOULEMENT REAFFIRMATION ACT OF 1992
 Before The
HOUSE FOREIGN AFFAIRS COMMITTEE
 Subcommittee on International Operations
 Subcommittee on the Western Hemisphere
 June 11, 1992

Mr. Chairman and members of the Committee:

Thank you for inviting me here to present my views on the Nonrefoulement Reaffirmation Act of 1992. I am a Professor of Law at Yale Law School, specializing in international law and the Constitution and Foreign Affairs. In that capacity I co-teach the Lowenstein International Human Rights Clinic, a Yale law school course dedicated toward promoting international human rights through litigation and other forms of activism. From 1983-85, I served as an Attorney-Adviser at the Office of Legal Counsel of the Department of Justice. With the Chair's permission, I have prepared a statement which I would like to submit for the record.

In March, along with my students and four co-counsel -- Michael Ratner of the Center for Constitutional Rights, Lucas Guttentag of the ACLU Immigrants' Rights Project, Robert Rubin of the San Francisco Lawyers Committee for Urban Affairs, and Joseph Tringali of the New York firm of Simpson, Thacher and Bartlett -- I filed the lawsuit of Haitian Centers Council, et al. v. McNary, on behalf of several thousand Haitian refugees and the American volunteer lawyers who seek to give them legal counsel. That lawsuit is currently pending both in Brooklyn federal district court before

Judge Sterling Johnson, Jr. (No. 92-1258 E.D.N.Y.) and before the U.S. Court of Appeals for the Second Circuit in Manhattan, Nos. 92-6090 & 92-6144 (2d Cir. 1992).

Today, let me do three things: first, describe our lawsuit and the various aspects of the Administration's Haiti policy that we are challenging; second, explain why the latest shift in policy effected by the President's May 24th order is, in our view, not just lawless, but also mindless and heartless in its grievous impact upon real people, our Haitian refugee clients; and third and finally, clarify what the bill pending before you -- the Nonrefoulement Reaffirmation Act of 1992 -- will and will not do to help address this tragic situation.

I. The Haitian Centers Council v. McNary Litigation

Let me first describe our case, Haitian Centers Council v. McNary, Nos. 92-6090 & 92-6144 (2d Cir. 1992). That case has now divided into two distinct lawsuits: what I will call the "right to counsel" case and the "nonrefoulement" case. In the first, the right-to-counsel case, brought in March, we argued that several thousand Haitian refugees currently being held incommunicado in custody on the U.S. Naval Base in Guantanamo Bay -- whom the United States Government itself has "screened-in" as having credible fears of political persecution in Haiti -- have rights, under the Due Process Clause of the Fifth Amendment to the United States Constitution, to attorneys at their own expense in asylum proceedings before they may be sent back to persecution or possible death in Haiti. In response to our filing, the Justice Department asked us -- pro bono attorneys, law students, and their clients -- to post a \$10 million bond, the largest bond ever requested in the history of the New York federal courts and many times the size of the bond in the Texaco-Pennzoil case. Moreover, the Justice Department asked the trial court to fine us for having filed a "frivolous" lawsuit. With your permission, I would like to insert for the record two recent newspaper accounts, by Anthony Lewis of the New York Times and Marcia Chambers of the National Law Journal, describing the outrageous government effort to silence those who would challenge the Haitian interdiction program (Attachment A).

Happily, Judge Sterling Johnson accepted our legal position and granted us both a temporary restraining order and preliminary injunction, which barred defendants from sending such refugees back to Haiti who have not had a chance to talk to their lawyers. Just yesterday, I am gratified to note, the U.S. Court of Appeals for the Second Circuit affirmed that ruling in an opinion by Judge Lawrence Pierce. With your permission, I would like to submit a copy of the Second Circuit's opinion for the record as an addendum to this statement (Attachment B), along with a copy of Judge Sterling Johnson's earlier preliminary injunction opinion in McNary (Attachment C).

Like the bill that this subcommittee is considering today, the second part of our lawsuit — what I will call the "nonrefoulement" suit — grew out of the profoundly lawless act committed by the Bush Administration on May 24, 1992, during Memorial Day weekend. On that day, without legal authority, and in blatant disregard of our binding domestic and international legal obligations, the President purported to revoke Executive Order No. 12,324, 45 Fed. Reg. 48,109 (Sept. 29, 1981), which for more than ten years had specified "that no person who is a refugee will be returned [to Haiti] without his consent."

On May 24, the Administration began to claim that the Coast Guard and Immigration and Naturalization Service (INS) could summarily and forcibly return bona fide refugees, without any process whatsoever, to conditions of persecution and death in Haiti without any procedures whatsoever. They further claimed that the Attorney General has "unreviewable discretion" to make a blanket determination that all Haitians who flee to this country by sea, even those refugees who have a credible fear of political persecution in Haiti — not "economic" rather than "political" refugees. Pursuant to this brutal and lawless policy, the Administration has already forcibly repatriated at least 3000 Haitians without any screening whatsoever, in total disregard of their fears of political persecution.

As part of our ongoing lawsuit, on May 28, we filed a second request for a temporary

restraining order before Judge Johnson challenging ~~this~~ dramatic change in the decade-old Haitian interdiction policy effected by the President's May 11 order.

We argued that the President's ~~acts~~ flouted three binding legal obligations with regard to Haitian refugees interdicted on the high seas. First, those actions baldly violate the "nonrefoulement" provision, Article 33, of the United Nations Convention Relating to the Status of Refugees, 189 U.N.T.S. 137, done July 28, 1951, which became United States law upon ratification of the 1967 U.N. Protocol Relating to the Status of Refugees, 606 U.N.T.S. 267, 19 U.S.T. 6223, T.I.A.S. No. 6577, on November 1, 1968. Article 33 provides:

No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion (emphasis added).

Second, the Attorney General's actions squarely offend Section 243(h)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1253(h)(1), which Congress passed as part of the Refugee Act of 1980 to reaffirm the self-executing obligation of Article 33. That provision mandates that

the Attorney General shall not deport or return any alien . . . to a country if the Attorney General determines that such alien's life or freedom would be threatened on account of his race, religion, nationality, membership in a particular social group, or political opinion" (emphasis added).

Third, the Administration's actions flout the terms of the U.S.-Haiti Executive Agreement, Agreement Effected by Exchange of Notes, T.I.A.S. 10,241, signed on September 23, 1981, which is still binding law between the two governments and has not been terminated. In that bilateral executive agreement, the Government of Haiti "agree[d] to permit upon prior notification the return of detained vessels and persons to a Haitian port," but did so "[h]aving regard to . . . the international obligations mandated in the Protocol Relating to the Status of Refugees done at New York 31 January 1967 . . ." and in the express understanding "that under these arrangements the United States Government does not intend to return to Haiti any Haitian migrants whom the United States

authorities determine to qualify for refugee status" (emphasis added).

In 1981, these three binding legal obligations compelled President Reagan to include provisions in the Executive Order No. 12,324, which required "that no person who is a refugee will be returned [to Haiti by the Coast Guard] without his consent," Section 2(c)(3), and which ordered the "Attorney General . . . in consultation with the Secretary of State and the Secretary of the Department in which the Coast Guard is operating, [to] take whatever steps are necessary to ensure the fair enforcement of our laws relating to immigration . . . and the strict observance of our international obligations concerning those who genuinely flee persecution in their homeland" Section 3 (emphasis added).

I should note that by its own terms, the 1981 Executive Order applied "only outside the territorial waters of the United States," demonstrating, by the executive's own admission, that Article 33 of the U.N. Convention applies on the high seas. Moreover, only one month before that Executive Order issued, the Justice Department's own legal counsel examined whether defendants' proposed interdiction policy conformed with our obligations under the 1967 U.N. Protocol and concluded that the Protocol required that "[i]ndividuals who claim that they will be persecuted . . . must be given an opportunity to substantiate their claims." 5 Op. Off. Legal Counsel 242, 248 (1981) (emphasis added).

But on May 24, 1992, the President simply dispensed with those binding legal obligations, invoking his implied presidential authority under the Constitution and sections 212(f) and 215(a)(1) of the INA. Instead, he purported to revoke the 1981 Executive Order, May 24 Exec. Order, Sec. 3; to authorize defendants Coast Guard Commandants and INS summarily and forcibly to return bona fide refugees without any semblance of process to conditions of persecution and death in Haiti, May 24 Exec. Order, Sec. 3; and to grant defendant Attorney General unreviewable discretion to deny Haitians access to the U.S. asylum program, without any "screening" procedures whatsoever, May

2(c)(3). The Administration further suggested that henceforth, Haitian refugees should appear at the U.S. Embassy or Consulate in Port-au-Prince to raise their asylum claims. See White House Press Release of May 24.

Four days after that order issued, we asked Judge Johnson of the Brooklyn federal court to restrain the Administration's new policy, and temporarily to block defendants from repatriating, under the purported authority of the May 24th Order, any interdicted Haitian to Haiti whose life or freedom would be threatened on account of his or her race, religion, nationality, membership in a particular social group or political opinion.

We asserted four reasons why that the May 24th Order provides no legal authority for defendants' actions:

(1) Defendants' actions are ultra vires. The Constitution grants Congress, not the President, exclusive authority to regulate immigration. See U.S. Const., Art. I, § 8, cl. 4. Congress has exercised its authority by mandating that the Attorney General shall not return aliens to countries where their life or freedom would be threatened on account of their political opinion. INA §243(h). Sections 212(f) and 215(a)(1) of the INA only address the President's power to regulate entry of aliens into the United States; neither provision grants defendants any power to return plaintiffs in conditions of political persecution, particularly when Congress has expressly denied defendants such authority in § 243(h).

(2) Sections 2(c)(3) and 3 of the May 24th Order violate defendants' binding domestic legal obligations under Article 33 of the UN Protocol Relating to the Status of Refugees, § 243(h) of the Immigration and Nationality Act, and the 1981 U.S.-Haiti Executive Agreement not to forcibly return to Haiti Haitian refugees found to have a credible fear of political persecution;

(3) Defendants' ultra vires and unlawful actions are arbitrary and capricious, an abuse of discretion, in ~~violation~~ of statutory authorization, and not in accordance with law in violation of the

Administrative Procedure Act (APA); and

(4) Defendants' actions, which are directed only against black Haitian refugees, deny plaintiffs the equal protection of the laws, in violation of the Fifth Amendment of the United States Constitution.

On June 5, following an oral argument in which the Solicitor General of the United States (who ordinarily argues only in the Supreme Court) made an extraordinary appearance in District Court to defend the Administration's policy, the District Court denied our request in an opinion that I submit here for the record (Attachment D). Judge Johnson ruled that he could not give us relief for two reasons. First, he felt "constrained" by an earlier Second Circuit precedent, Bertrand v. Sava, 684 F.2d 204, 218 (2d Cir. 1982), which found, under the specific facts presented there, that the Protocol's provisions were not self-executing. June 5 Op. at 6-7. Second, he concluded that our clients had no right to relief under Section 243(h) of the INS, because that statutory provision is "unavailable as a source of relief for Haitian aliens in international waters." June 5 Op. at 8.

Nevertheless, Judge Johnson condemned the Administration's change in policy in the harshest possible terms, declaring:

It is unconscionable that the United States should accede to the Protocol and later claim that it is not bound by it. This court is astonished that the United States would return Haitian[] refugees to the jaws of political persecution, terror, death and uncertainty when it has contracted not to do so. The Government's conduct is particularly hypocritical given its condemnation of other countries who have refused to abide by the principle of non-refoulement. As it stands now, Article 33 is a cruel hoax and not worth the paper it is printed on unless Congress enacts legislation implementing its provisions or a higher court reconsiders Bertrand [v. Sava], 684 F.2d 204 (2d Cir. 1982)].
June 5 Op. at 7-8.

Although we agreed with Judge Johnson's sentiments, we believe that his denial of our challenge to the Administration's policy was incorrect in several important respects. In particular, we disagree with Judge Johnson's two main conclusions: that Article 33 is not self-executing as U.S. law and that the statutory prohibition of nonrefoulement does not apply outside the territorial United

States.¹ For that reason, last Monday, we filed an expedited appeal to the Second Circuit which we currently expect to argue sometime during the week of June 22, 1992.

II. The Real-Life Impact of the Administration's New Policy

In our view, the Administration's new policy is not simply lawless, it is also mindless and heartless for reasons explained more fully in a letter that my co-counsel Michael Ratner and I recently published in the New York Times (Attachment E).

The policy is mindless because on the one hand, our foreign policy is to condemn the current Haitian junta as illegitimate and to strangle the Haitian economy through economic sanctions, while on the other, our immigration policy is to send Haitian refugees back to Haiti as quickly as we can pick them up.

The policy is heartless because political conditions in Haiti, which were already horrific, have deteriorated markedly in recent months. Evidence in our case has shown that

- ▶ "In the wake of the overthrow [of President Aristide], hundreds of Haitians have been killed, tortured, detained without a warrant, or subjected to violence and the destruction of their property because of their political beliefs. Thousands have been forced into hiding." April 6 Preliminary Injunction Op., Attachment C, Findings of Fact, ¶ 6.
- ▶ "Repatriated Haitians face political persecution and even death on their return to Haiti." Findings of Fact, ¶ 24.
- ▶ "The Screened In Plaintiffs may face torture [or] death if they lack access to counsel, fail in their bid to receive asylum, and are repatriated to Haiti." Conclusion of Law, ¶ 12.
- ▶ Members of the plaintiff class who were forcibly repatriated to Haiti because they refused to undergo final determinations of their asylum claims without an attorney have been subjected to abuse and torture upon return and are currently in hiding because they fear torture and

¹ Judge Johnson also did not address our claims under the 1981 U.S.-Haiti Agreement, the Administrative Procedure Act, the Equal Protection clause of the Constitution. He did not address our claim that even if Article 33 is not self-executing, as executed by the Refugee Act of 1980, that provision nevertheless applies extraterritorially to constrain defendants' actions. Nor did the District Court explain why Section 243(h) of the INA should not apply extraterritorially, when defendants expressly rely upon the extraterritorial application of Sections 212(f) and 215(a)(1) as authority for their May 24th Order and Section 207, as authority for their preferred option of embassy asylum processing abroad.

even death.

Let me make this more concrete by describing the plight of two of our clients: one of our named plaintiffs, who we identify for his own safety by the pseudonym "M. Bertrand," and another plaintiff, "M. Remy," whom we met and personally counselled in Guantanamo on March 30 to 31, 1992. Both men were political activists and supporters of the Aristide regime. Both suffered political persecution after the coup, and Mr. Bertrand's closest relatives were killed by the Haitian military.

Both fled Haiti by sea late last year, were interdicted, brought to Guantanamo, and were "screened-in" as having credible fears of political persecution. But in Guantanamo, they were held in prison-camp type conditions behind razor barbed wire, denied all rights to communicate with the outside world, subjected to physical abuse, involuntary blood testing, and summary punishment. Bertrand and Remy formed a group of political activists in Guantanamo who requested the assistance of lawyers and retained us as their counsel. The U.S. authorities in Guantanamo refused to let us meet with them, except for a brief period in March, under court order.

In February, the Government promised Bertrand and Remy, and specifically represented to the Supreme Court, that all Haitians who were "screened in" as having such credible claims would be brought to the United States for formal political asylum proceedings, conducted with the assistance of counsel and full administrative and judicial review. In March, defendants changed their policy and argued unsuccessfully to the New York federal courts that such screened-in Haitians deserved only informal asylum proceedings, without lawyers, in Guantanamo. Based on their discussions with their lawyers, Bertrand and Remy both refused to undergo further proceedings on Guantanamo without lawyers. In late April, after the Supreme Court by a 5-4 vote temporarily stayed Judge Johnson's court order, defendants returned the two to Haiti without giving them a chance to speak to their lawyers again, and indeed precisely because they refused to be rescreened without their lawyer present.

The Government forced Bertrand off of the Coast Guard cutter onto Port-Au-Prince with a firehose, where he was fingerprinted and later identified by Haitian military authorities. Within 48 hours of his forced return, he was beaten savagely by three Haitian military officers, and his left arm was severely fractured. Both Bertrand and Remy, who suffered a similar fate, are currently in hiding and in fear for their lives.² Both would now flee Haiti for the United States or elsewhere again, but for the Government's now forcible, summary repatriation policy.

Despite the Administration's claim that these men may now seek asylum through the U.S. Embassy in Haiti, our evidence shows that it would be "suicide" for them to do so. See Attachment F (Plaintiffs' Exhibit 87 (Aubourg Dec.); 88 (O'Neill Dec.), 89 (Rubin Dec.)). A potential asylee must literally run a gauntlet of Haitian security officials simply to reach the U.S. Consulate. To pursue this option, the asylee would have to leave hiding, pass numerous security road blocks, enter the heavily militarized capital city of Port-Au-Prince, travel to areas surrounding the U.S. Consulate and Embassy that are especially dangerous given the high concentration of security forces, present and identify himself as an asylum seeker to Haitian security forces before entering, subject himself to their scrutiny, engage in highly adversarial proceedings with U.S. immigration officials, then repeat the entire process several times before receiving a final determination on his asylum request. Even Haitians with clearly well-founded asylum claims have had their applications rejected by U.S. immigration officials in highly adversarial proceedings.

Moreover, the Embassy already has a substantial backlog of cases. Given the slim chance that a Haitian applicant will actually receive asylum through this process, and the extraordinary risks one must take to pursue such a claim, few people even try. We understand that only 51 of some 2,300

²Our evidence shows, based on the Government's own concessions, that at least 150 Haitians have been screened-in, originally placed in custody on Guantanamo and scheduled to be brought to the United States, but subsequently repatriated to Haiti where a number have been persecuted or killed.

Haitians repatriated since the inception of the new policy actually have sought asylum through the embassy process. (Attachment G) (New York Times, May 30, 1992, at 1). Finally, the overseas refugee processing program contains a regional quota of 3500 for the entire Caribbean and Latin America this year that would be quickly exhausted if the number of Haitians driven to flee Haiti by boat were to apply to the Embassy for visas.

In short, our clients have gone from having a promise in February, 1992 of formal asylum proceedings, with lawyers, in the United States, to ~~no assurance~~ in March of de facto asylum proceedings without lawyers in Guantanamo, to forced repatriation to Haiti in April without any asylum process or lawyers whatsoever, despite their proven credible fears of persecution, and now, in June, the offer only of an asylum process in Haiti that it would be suicide for them to pursue.

III. The Nonrefoulement Reaffirmation Act of 1992

What effect, if any, would the bill pending before you have on this tragic situation? Let me make three simple points.

First, we applaud Congress' effort to counter directly, through legislation, a new administration policy that, in effect, encircles Haiti with a floating "Berlin Wall" and pushes all interdicted Haitians back to their persecutors. This policy is outrageous, and a strong Congressional response is important both because the policy violates the supreme law of the land -- Article 33 of the U.N. Convention, Section 243(h) of the INA, and the very Executive Agreement with Haiti under which the administration purports to act -- and because the policy is an unlawful attempt by the Executive branch to seize authority in the field of immigration, an area within the full plenary power of Congress. Congress has spoken, and spoken clearly, that the administration may not forcibly return genuine refugees to a country where their life and freedom is threatened. This latest move by the President raises serious constitutional concerns that must not go unaddressed by this body.

Second, the bill marks an important re-affirmation of binding United States obligations

contained in Article 33 of the U.N. Convention. Article 33 has bound United States officials wherever they choose to exercise jurisdiction since Senate ratification of the protocol in 1968. Until May 24, the Executive consistently re-affirmed that obligation. In fact, the Justice Department's own Legal Counsel in evaluating the lawfulness of the 1981 order establishing the interdiction program, carefully stated that in order to comply with its international obligations, Haitians interdicted on the high seas "must be given an opportunity to present their claims." 5 Op. Off. Legal Counsel 242, 248 (1981). Section 2(a) of the bill address Judge Johnson's first mistaken conclusion that Article 33 was not self-executing by making clear that those obligations apply, and have applied since 1960. Moreover, sections 2(b) and (c) rebut Judge Johnson's second mistaken conclusion that the nonrefoulement obligation does not apply extraterritorially, by making clear that the U.S. government shall not return, or aid and abet the return, of refugees or would-be refugees whom it takes into custody outside the United States or within the territorial waters of another country.

Third, the bill recognizes that the United States Government simply cannot return refugees to conditions of persecution without providing them minimal procedural protections in the form of internationally recognized fair procedures. At a minimum, this means that the U.S. government cannot, as it is now doing, simply return a refugee to the place where he will be persecuted without an individualized determination regarding his refugee status. The kind of blanket determination that the Administration is currently making is simply unlawful. How can it be that on May 23, the INS was screening in roughly 30% of all interdicted Haitians as having a credible fear of persecution, but on the next day, it was sending all interdicted Haitians back based on no procedures, or a blanket presumption that all are economic migrants? The Second Circuit ruled yesterday that screened-in Haitians in Guantanamo have a Fifth Amendment right to Due Process of law in their encounters with U.S. officials. We believe that Haitians who would have been screened-in but for the Administration's new policy have a similar right to fair procedures, which is being denied by the total

procedural deprivation they are now suffering.

Although we are currently challenging the absence of procedures afforded interdicted Haitians in the courts, and although we recognize that many kinds of procedures may be appropriate — including, but not limited to, a right to counsel and appeal and the evaluation of persecution claims by trained asylum officers — we urge you to take the important first step in this bill of reaffirming that those facing political persecution must not be returned without fair procedures to determine their refugee status. But it is absolutely imperative that you make crystal-clear that the promises made in this bill set a floor, and not a ceiling, on the treatment accorded to refugees who are interdicted on the high seas.

Let me close by saying that the Administration's May 24th policy represents only the most recent and egregious in a series of increasingly lawless policies designed to obstruct Haitian flight and skirt judicial review. The policy offends two of our Nation's most fundamental principles: first, that we are a Nation of laws, and not individuals, in which the acts of government officials are fully subject to the rule of law; and second, that we are a Nation that does not and abet political repression by delivering victims into the hands of their persecutors. Enactment of this, and future legislation, is a vital step toward reaffirming these two principles. This is action urgently required. Human rights and human lives depend upon it. Those rights and lives simply cannot wait until after the summer recess.

My co-counsel, students, and I would be happy to work closely with your staff to strengthen the bill in these and other respects.

Thank you for your attention.

Mr. BERMAN. Thank you.

Rabbi Haskel Lookstein, Rabbi to Congregation Kehilath Jeshurun in New York City.

STATEMENT OF RABBI HASKEL LOOKSTEIN OF CONGREGATION KEHILATH JESHURUN

Rabbi LOOKSTEIN. Thank you.

I am also here as Chairman of the New York Coalition for Soviet Jewry, something I have been working on for 23 years, and which stimulated my whole interest in the issue of refugees, both today and 50 years ago, during the Holocaust.

Mr. BERMAN. Yes, you have written on that.

Rabbi LOOKSTEIN. I am also a first vice president of the Synagogue Council of America, a combined body which unites orthodox, conservative and reform congregations and rabbis.

I have written a book called "Were We Our Brother's Keepers?" It is a book which deals with the American and Jewish response to the plight of the European Jews during the Holocaust.

I would like to testify from a Jewish ethical perspective, from an American perspective, and from the perspective of history. From a Jewish ethical perspective, and the sages of the Talmud clarify the principles further. The Bible states in Leviticus, Chapter 19, Verse 16, "Do not stand idly by while your brother's blood is spilled."

A medieval commentator, Rashi, quoting a source contemporaneous with the Talmud, states that one is not allowed to watch the death or possible death of another person if the onlooker could possibly save that person. For example, if a person is drowning in a body of water, one must intervene. If a person is attacked by wild animals or by marauders, one must similarly intervene.

Contemporary conditions in Haiti have been accurately described as representing a serious threat to the life of many Haitians, a threat that is both political and economic. The starvation, the disease, as well as the persecution, all fall into the category of serious threats to life. The fact that so many Haitians are ready to risk death at sea in order to escape confirms the extent of the threat.

One should add that the distinction between a threat to life from political persecution on the one hand and a threat to life from starvation, disease, and terrible economic hardship, on the other, is not one which can stand the test from a Jewish ethical perspective.

One is not allowed to be a bystander to someone else's potential death, whether that death is caused by persecution or poverty.

There is a further principle that I believe operates here. In the book of Deuteronomy, Chapter 23, Verse 16, the Bible states, "Thou shalt not return a slave to its master." Once again, Rashi emphasizes the importance of this principle and its extent, saying that it applies even if the slave were a Canaanite, that is, a non-Jewish slave, who belonged to a Jew and who fled from outside the land of Israel into the land of Israel. The fact that the person is not Jewish and that he came from outside the land does not allow a Jew to send back that human being, who is running from servitude and subjugation, in search of freedom and dignity.

These are Biblical principles by which we all live, Jews, Christians, Moslems. We cannot be bystanders and simply watch people desperately try to leave a benighted land and not help them.

We certainly cannot send them back to a land where they will be fingerprinted by the police as the picture in the May 27 edition of the *Times*, *New York Times*, showed. Such a process, we all understand what it means. To send them back because they tried to escape, we cannot do that.

As an American, I am concerned by two issues. First, we fought a war over the issue of returning a captive or a slave to his master. One hundred and thirty years after that war, we should not reverse the principle for which we fought and died successfully.

Second, on the pedestal of the Statue of Liberty there was placed in 1903 the following words written by the Jewish poet Emma Lazarus 20 years earlier, in the sonnet, *The New Colossus*: "Give me your tired, your poor, your huddled masses, yearning to breathe free."

Ms. Lazarus wrote those words about European Jewish immigrants fleeing from economic privation in Eastern Europe and seeking the shores of this blessed country. It deeply offends me as an American and as a Jew to contemplate that these words which grace the symbol of liberty in New York harbor might apply to white Europeans, but not to black Central Americans.

We cannot afford to make such a distinction, nor even to make the appearance of such a distinction. Appearances are important, too. Despite the inconvenience that a potentially large influx of Central Americans might represent to us in this country, the magnet effect that Ambassador McKinley spoke about, the requirement to open our doors to the tired, the poor, the downtrodden and the persecuted should know virtually no limit for a country that correctly prides itself as the land of the free.

If such an influx will create discomfort for us, so be it. We are not the owners of the world, nor are we the owners of this land. We are all guests in God's world, and we must be scrupulously careful when we refuse a place in that world to others who desperately seek it.

Finally, there is the perspective of history. Fifty-three years ago this month, as Congressman Solarz pointed out, in June of 1939, 907 Jewish refugees fleeing from Germany sailed up and down the coast of Miami for 10 days hoping to be invited to these shores after having been refused landing rights in Cuba.

That ship was described in an editorial in *The New York Times* on June 8, 1939, as the saddest ship afloat today. On the following day, June 9, the *Times* editorialized: "We can only hope that some hearts will soften somewhere and some refuge be found." The crews of the *St. Louis* cries high to heaven of man's inhumanity to man.

Unfortunately, the editorial writer never suggested that America open its doors to these people. In fact, it wasn't even a realistic hope. But James Cannon, Jr., Episcopal Bishop of Richmond, Virginia did suggest that, in a letter to the *Richmond Times Dispatch*, when he wrote, why did not the President, Secretary of State, Secretary of the Treasury, Secretary of Labor and other officials arrange for the landing of these refugees who had been caught in

this maelstrom of distress and agony through no fault of their own?

Bishop Cannon charged that the American——

Mr. BERMAN. It would have had a magnet effect.

Rabbi LOOKSTEIN. Well, that is true. That is why they didn't do it. To assist the Jewish refugees on the St. Louis, he said, "This was one of the most disgraceful things which has happened in American history, and it leaves a stain and brand of shame upon the record of our nation."

It is vitally important that today when history repeats itself with other boat people, we do not repeat the same mistakes.

While researching this subject in 1977, I discovered that on June 21 of that year, the day the late Menachem Begin took office as Prime Minister of Israel, his first official act of office was to grant asylum to 66 Vietnamese who had been picked up by an Israeli freighter and rejected at several Far Eastern ports.

Israel was, properly, the first to open its doors to the boat people of Southeast Asia, 15 years ago—properly, because the Jewish people lived the tragedy of the boat people in 1939. And the Jewish state was not prepared to repeat the errors of the past.

The United States of America, which did open its doors to the boat people of the Far East, should do nothing less for the desperate boat people of Haiti today. Opening our doors to them, and reversing the policy announced on May 24 of this year, would be a righteous act from an ethical point of view, a fitting act in keeping with the American tradition, and a proper response to the lessons of recent history.

I plead that the current policy be altered to achieve these results, and that the bill that Congressman Solarz has introduced into the House should be approved.

[The prepared statement of Rabbi Lookstein follows:]

HEARING OF THE SUBCOMMITTEES ON INTERNATIONAL OPERATIONS
AND WESTERN HEMISPHERE AFFAIRS

Ladies and Gentlemen,

My name is Haskel Lookstein. I am Rabbi of Congregation Kehilath Jeshurun in New York City and Principal of the Ramaz School. I am also Chairman of the New York Coalition for Soviet Jewry and First Vice President of the Synagogue Council of America, a combined body which unites Orthodox, Conservative and Reform congregations and rabbis. I am the author of "Were We Our Brothers' Keepers? The Public Response of American Jews to the Holocaust, 1938-1944," a book which deals with the American and Jewish response to the plight of European Jews during the Holocaust.

I have come to testify on the current policy of the United States Government to return to Haiti, Haitian refugees who are picked up at sea on their way to seek asylum in the United States. I would like to testify from a Jewish ethical perspective, from an American perspective and from the perspective of history.

I.

From a Jewish ethical perspective, the Bible is quite clear on this issue and the Sages of the Talmud clarify the principles further. The Bible states in Leviticus Ch. 19, V. 16, "Do not stand idly by while your brother's blood is spilled." Rashi, the medieval commentator, quoting a source contemporaneous with the Talmud, states that one is not allowed to watch the death of another person if the onlooker could possibly save that person. For example: If a person is drowning in a body of water one must intervene. If a person is attacked by wild animals or by marauders one must similarly intervene. Contemporary conditions in Haiti have been accurately described as representing a serious threat to the life of Haitians, a threat that is both political and economic. The starvation, the disease, as well as the persecution, ALL fall into the category of serious threats to life. The fact that so many Haitians are ready to risk death at sea in order to escape, merely confirms the extent of the threat.

One should add that the distinction between a threat to life from political persecution, on the one hand, and a threat to life from starvation, disease and terrible economic hardship, on the other, is not one which can stand the test

from ■ Jewish ethical perspective. One is not allowed to be a bystander to someone else's potential death whether that death is caused by persecution or poverty.

There is a further principle that I believe operates here. In Deuteronomy Ch. 23. V. 16, the Bible states "Thou shalt not return ■ slave to its master." Once again Rashi emphasizes the importance of this principle saying that it applies even if the slave were a Canaanite (that is, non-Jewish) slave who belonged to a Jew and who fled from outside the Land of Israel into the Land of Israel. The fact that the person is not Jewish and that he came from outside the Land of Israel does not allow a Jew to send back that human being who is running from servitude and subjugation in search of freedom and dignity.

These are Biblical principles by which we all live. We cannot be bystanders and simply watch people desperately try to leave ■ benighted land and not help them. We certainly cannot send them back to ■ land where they will be fingerprinted by the police - with all that such a process means - because they tried to escape.

II.

As an American, I am concerned by two issues. First, we fought a war over the issue of returning a captive or a slave to his master. One hundred and thirty years later we should not reverse the principle for which we fought and died successfully.

Second, on the pedestal of the Statue of Liberty in 1903 there was placed the following words written by the Jewish poet Emma Lazarus in 1883, in the sonnet The New Colossus "Give me your tired, your poor, your huddled masses yearning to breathe free." Ms. Lazarus wrote those words about European Jewish immigrants fleeing from economic privation in Eastern Europe and seeking the sun-kissed shores of this blessed country. It deeply offends me as an American and as a Jew to contemplate that these words which grace the symbol of liberty in New York harbor might apply to white Europeans but not to black Central Americans. We cannot afford to make such a distinction despite the inconvenience that a potentially large influx of Central Americans might represent to us in this country. The requirement to open our doors to the tired, the poor, the downtrodden and the persecuted should know virtually no limit for a country that correctly prides itself as the Land of the Free. If such an influx will create discomfort for us, so be it. We are not the owners

of the world, nor are we the owners of this land. We are all guests in God's world and we must be scrupulously careful when we refuse a place in that world to others who desperately seek it.

III.

Finally, there is the perspective of history. Fifty-three years ago this month, in June of 1939, 907 Jewish refugees, fleeing from Germany, sailed up and down the coast of Miami hoping to be invited to these shores after having been refused landing rights in Cuba. That ship was described in an editorial in the New York Times on June 8, 1939, ■■ "The Saddest Ship Afloat Today." On the following day, the Times editorialized, "We can only hope that some hearts will soften somewhere and some refuge be found. The cruise of the St. Louis cries high to heaven of man's inhumanity to man." Unfortunately, the editorial writer never suggested that America open its doors to these people.

But James Cannon, Jr., Episcopal Bishop of Richmond, Virginia, did suggest it in a letter to the Richmond Times-Dispatch when he wrote "Why did not the President, Secretary of State, Secretary of the Treasury, Secretary of Labor and other officials.... arrange for the landing of these refugees who had been caught in

this maelstrom of distress and agony through no fault of their own?" Bishop Cannon charged that the American failure to assist the Jewish refugees on the St. Louis "Was one of the most disgraceful things which has happened in American history and leaves a stain and brand of shame upon the record of our nation."

It is vitally important that today, when history repeats itself, we do not repeat the same mistakes. While researching this subject in 1977, I discovered that on June 21st of that year, the day the late Menachem Begin took office as Prime Minister of Israel, his first official act was to grant asylum to 66 Vietnamese who had been picked up by an Israeli freighter and rejected at several Far Eastern ports. Israel was properly the first to open its doors to the Boat People of Southeast Asia; properly because the Jewish people lived the tragedy of the Boat People in 1939 and the Jewish State was not prepared to see repeated the errors of the past. The United States of America, which did open its doors to the Boat People of the Far East, should do nothing less for the desperate Boat People of Haiti today. Opening our doors to them would be a righteous act from an ethical point of view, a fitting act in keeping with the American tradition, and a proper response to the lessons of recent history. I plead that the current policy be altered to achieve these results. Thank you.

Mr. BERMAN. Very good.

Mr. Helton, a well-known name in this area for a long time.

**STATEMENT OF ARTHUR HELTON, ESQUIRE, DIRECTOR,
REFUGEE PROJECT, LAWYERS COMMITTEE FOR HUMAN RIGHTS**

Mr. HELTON. Thank you, Mr. Chairman. I am Director of the Refugee Project of the Lawyers Committee for Human Rights.

Having followed the situation of the Haitian boat people for some time now, I am afraid I have nearly run out of adjectives in terms of describing the administration's policy but I would like to offer four terms for your consideration and brief discussion.

The first, deviant. The second, hypocritical. The third, unlawful. And the fourth, parochial.

In the first instance, deviant, I would simply make reference, as others have, to the fact that countries such as Bangladesh now host to some 270,000 Burmese asylum seekers, or Kenya, host to 300,000 asylum seekers, despite the obvious magnet effect of such displays of generosity. These are countries far less capable of absorbing and hosting asylum seekers than the United States.

In the second instance, hypocritical. Indeed one only has to look at the statements of the United States in connection with the urging of first asylum on countries in Asia in the reception of Vietnamese boat people to see the cynical denial of safe haven for Haitian boat people.

The third, unlawful. It is with great sadness I come here today to discuss the ambit of protection provided under Article 33 of the convention and protocol relating to the status of refugees. That nonreform obligation is the most fundamental tenet of refugee law. It is the foundation on which all other protections for refugees are built, what the institution of refugee protection means in the modern world.

All the administration can marshal against Article 33, apart from the summary assertion that it does not apply, are brief comments in the negotiating history by three delegates who were in attendance in 1950.

Against that modest and equivocal evidence is the plain language of the statute which prohibits the return of refugees in any manner whatsoever. There are three ways refugees can be returned. By land, by sea, and by air. And when the treaty makers said in any manner whatsoever, they meant any manner whatsoever.

It is the consensus of virtually all commentators, the Office of the United Nations High Commissioner for Refugees, and, perhaps ironically, also the Reagan administration's Justice Department, which in 1981 found the nonreturn obligation applicable on an extraterritorial basis in the Haitian interdiction program.

Parochial partly in the sense that throughout the course of the high seas interdiction program, we have not given enough attention in the interception of boat people to the applicable international standards which would require the provision of information and counseling to boat people, access to assistance by relevant agencies or lawyers, fair and adequate hearings and an opportunity

to articulate claims of persecution, and adequate review of any rejections.

Such safeguards were largely absent in the prior version of the Haitian interdiction program. However, I am very pleased to note that the legislation which in part we are discussing here today, H.R. 5360, incorporates by reference are procedures and criteria of the United Nations High Commissioner for Refugees. The application of those standards would guarantee that such procedural protections are available to the Haitian boat people.

We thus strongly urge enactment of this proposed legislation to end continuing violation by the executive branch of the fundamental human rights of Haitian refugees. The proposed legislation will not affect the President's authority concerning the entry of aliens into the United States, nor will it interfere with the Executive's regulation of immigration policy. It does not prescribe a place of temporary refuge. However, enactment will correct the administration's politically expedient interpretation of the Article 33.

Enactment will also fundamentally ensure that this country observes the international consensus to protect refugees from return to a place where their lives or freedom are threatened.

Thank you.

[The prepared statement of Mr. Helton follows:]

Lawyers Committee for Human Rights

REFUGEE PROJECT

STATEMENT OF ARTHUR C. HELTON

DIRECTOR, REFUGEE PROJECT
LAWYERS COMMITTEE FOR HUMAN RIGHTS

HEARING ON H.R. 5360,
THE INTERNATIONAL REFUGEE PROTECTION ACT OF 1991

BEFORE THE

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON FOREIGN AFFAIRS

June 11, 1992

Chairmen Berman and Torricelli and members of the Subcommittees, I want to thank you for convening these hearings and for inviting me to testify. Since 1978, the Lawyers Committee for Human Rights has worked to promote international human rights and refugee protection.

I am the Director of the Refugee Project of the Lawyers Committee, with offices in New York and Washington, D.C. In this capacity, I have worked for over a decade on issues concerning Haitians seeking refuge in the United States. In the course of our efforts to promote the human rights of refugees, we have long endeavored to ensure that Haitian asylum seekers are treated with fairness and without discrimination; we have also been committed to seeing that all nations understand their obligations under international law and abide by them. I thus offer this testimony on the proposed International Refugee Protection Act of 1992.

I will make three major points in my statement. First, the U.S. policy of returning Haitian boat people is deviant and hypocritical. Second, non-refoulement (the prohibition against the return of refugees to a place of persecution) is a binding legal obligation that operates extraterritorially, and is not simply a matter of Executive discretion. Third, minimum international procedural standards for determining whether an individual is a refugee, which I will detail, must be observed in discharging the non-refoulement obligation.

1. The U.S. Government Policy of Returning Haitian Boat People is Deviant and Hypocritical.

The policy of summarily returning Haitian boat people established under the May 24, 1992, Executive Order, is a deviant departure from accepted international practice. Countries much less capable of absorbing asylum seekers are being much more generous than the United States. In many cases, those countries are refraining from returning asylum seekers to places where the violence is not as threatening as that in Haiti. For example, neither Pakistan nor Iran is making an effort to repatriate the six million Afghan refugees that have lived on their territories for the last decade. In Africa, 300,000 Ethiopians, Somalis and Sudanese have recently found asylum in Kenya. Beleaguered Bangladesh is sheltering 270,000 Rohingyas who fear return to the oppression in Burma; they are encamped in makeshift housing in an already overcrowded and impoverished region of Bangladesh. The conduct of the United States in returning Haitian boat people without inquiry into their claims of feared persecution constitutes a drastic departure from the international consensus in favor of refugee protection.

This new policy constitutes an exercise in world-class hypocrisy. When it is politically expedient, the United States government has forcefully argued against the repatriation of persons who have not yet entered other countries. Most notably, the United States used strong language to promote in Southeast Asia the very principles it is

now derogating. In 1989, the Deputy Secretary of State urged nations receiving Vietnamese boat people to do the following:

We must, first of all, unequivocally reaffirm the practice of first asylum . . . [C]ountries of first asylum would commit to:

- . Treating all asylum seekers in a humane manner,
- . Granting the UNHCR immediate access to all new arrivals, and
- . Working in close collaboration with the UNHCR on screening mechanisms for determining refugee status.¹

Yet now, when asked to do the same, our government cynically denies the obligation.

2. The Executive Order is unlawful because non-refoulement is a binding obligation, not a discretionary guideline, that operates extraterritorially.

Non-refoulement is the fundamental tenet of refugee law. The Administration, however, chooses to ignore this precept. In the so-called "Kennebunkport Order" dated May 24, 1992,² the President purports to authorize the Coast Guard to forcibly repatriate Haitians interdicted in sea, without even a cursory inquiry to ascertain whether they have valid asylum claims. The President stated in the Order that the treaty obligations of non-

¹Helton, Open Letter to Ambassador Jewel S. Lafontant, United States Coordinator for Refugee Affairs, United States Department of State, Washington, D.C., 2 Int'l. J. Ref. L. 130, 132 (1990) (hereinafter Open Letter).

²Executive Order No. 12,807, 57 Fed. Reg. 23,133 (June 1, 1992).

refoulement "do not extend to persons located outside the territory of the United States."³

This Order reiterates ■ position taken in 1989 by the State Department, when it stated:

the Convention obligation [against non-refoulement] only pertains to persons who have already entered the territory of the state. In the U.S. view, it does not apply to persons who arrive ■ the frontier of the state or who ■■ travelling with the intention of entering the state.⁴

This position is absolutely wrong.

It is well established that the right of non-refoulement is ■ principle of customary international law, binding even on those states which ■■ not parties to the international conventions. Article 33 of the 1951 Convention, as incorporated into its 1967 Protocol, imposes on all nations ■■ obligation not to expel or return ("refouler") refugees:⁵

[t]o the frontiers of territories where his life or freedom would be threatened on account of his race, religion,

³Id.

⁴Statement of ■■ official in the State Department's Refugee Bureau, quoted in Helton, Open Letter, ■■■■ note 1, at 132.

⁵Article 1(A)(2) of the 1951 Convention, as amended by article 1(2) of the 1967 Protocol, defines ■ refugee ■■ any person who "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of ■ particular social group ■■ political opinion, is outside the country of his nationality and is unable, ■■ owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having ■ nationality and being outside the country of his former habitual residence ■■ result of such events is unable or, owing to such fear, is unwilling to return to it." The United States became a party to the Protocol in 1968. T.I.A.S. No. 6577; 19 U.S.T. 6223.

nationality, membership of a particular social group or political opinion.⁶

The United States Supreme Court has called the obligation of non-refoulement "mandatory."⁷ It is binding on the United States because the United States has acceded to the 1967 Protocol and because it is customary international law.⁸

It is also well established that the right of non-refoulement applies equally to refugees seeking to enter a country as it does to those who have already entered it.

⁶Article 33, United Nations Protocol relating to the Status of Refugees, T.I.A.S. No. 6577; 19 U.S.T. 6223.

⁷See INS v. Cardoza-Fonseca, 480 U.S. 421, 429 (1987) (accession to the 1967 Protocol "imposed a mandatory duty . . . not to return an alien to a country where his 'life or freedom would be threatened.'").

⁸As the proposed legislation recognizes, the 1967 Protocol is self-executing and does not require any implementing legislation to be enforced in U.S. courts. Most courts addressing this question have found it to be self-executing. See Kashani v. INS, 547 F.2d 376 (7th Cir. 1977) (Protocol binding on U.S.); Coriolan v. INS, 559 F.2d 993, 996 (5th Cir. 1977) (Attorney General's authority to withhold deportation of aliens must be measured "in light of the United Nations Protocol."); Fernandez-Roque v. Smith, 91 F.R.D. 117 (N.D. Ga. 1981) (claims under Article 33 state valid cause of action for which relief may be granted); Pierre v. United States, 525 F.2d 933 (5th Cir. 1976), vacated and remanded to consider mootness, 434 U.S. 962 (1977) (barring job certification requirement which undercut employment granted refugees under the Protocol); Sannon v. United States, 427 F.Supp. 1270 (S.D. Fla. 1977), vacated and remanded on other grounds, 566 F.2d 104 (5th Cir. 1978) (Protocol establishes the right to a hearing for aliens threatened with exclusion). But see Bertrand v. Sava, 684 F.2d 204 (2d Cir. 1982) (Article 31 of the Protocol creates no rights for detained Haitians beyond those in domestic law.). In any event, the United States is bound by dictates of customary international law, including that of non-refoulement. G. Goodwin-Gill, The Refugee in International Law 97 (1983).

Article 33 of the Convention and Protocol relating to the Status of Refugees states:

No Contracting State shall expel or return ■ refugee ('refouler') in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of ■ particular social group or political opinion.⁹

As this language indicates, refugees cannot be returned "in any manner whatsoever" -- including by ■■ after interdiction. The plain language of the Protocol, however, does not deter the U.S. government from now arguing otherwise. The government is overly reliant on brief comments made by the Dutch, French and Swiss representatives during the drafting of the 1951 Convention.¹⁰ Specifically, the Dutch delegate expressed the view that "return" applied only to refugees already within the territory and that "the possibility of mass migrations across frontiers or of attempted ■■■■ migrations ■■■■ not covered by Article 33."¹¹ The United States looks to this language to interpret the meaning of the word "return" (or "refouler") in the Protocol.

This effort is misplaced for several reasons. First, it is undisputed that, according

⁹Article 33, United Nations Protocol relating to the Status of Refugees, supra note 6 (emphasis added).

¹⁰Letter opinion of Edwin D. Williamson, Legal Adviser, U.S. Department of State, dated December 11, 1991, requesting withdrawal of a contrary 1981 opinion of the Office of Legal Counsel at the Department of Justice.

¹¹Id. at 3 and 4.

to the Vienna Convention, the plain language of the treaty governs its interpretation, unless its meaning is ambiguous or would produce unreasonable results. The language here is unambiguous. The Convention and Protocol plainly bar the return of a refugee "in any manner whatsoever." Therefore, return of a refugee by land, by air, or by sea is forbidden according to the Protocol.

Moreover, the Dutch delegate's comments are inapposite. The concerns he expressed were of a mass migration across the land borders of Europe. Having just witnessed the mass dislocations caused by World War II, the delegate sought to ensure that his small country would not have to admit huge numbers of fleeing Europeans. An exodus by sea was clearly not within his, or the other delegates', contemplation.

Interestingly, the U.S. delegate to the conference took an entirely different view during the drafting phase. He stated:

It did not, however, follow that the convention would not apply to persons fleeing from persecution who asked to enter the territory of the contracting parties. Whether it was a question of closing the frontier to a refugee who asked admittance, or of turning him back after he had crossed the frontier, or even of expelling him after he had been admitted to residence in the territory, the problem was more or less the same.¹²

¹²Summary Record of the Twentieth Meeting of the Ad Hoc Committee on Statelessness and Related Problems held Feb. 1, 1950, U.N. Doc.E/AC.32/SR.20 at 11-12 (Feb. 10, 1950).

The United States now seeks to dismiss this elegantly simple statement of principle.

All other interpretations of the provisions of Article 33 are consistent with the view that it applies extraterritorially. Congress itself, in this proposed legislation, recognizes the extraterritorial application of Article 33. Congress here explicitly "reaffirms that the obligations of the United States under Article 33 . . . have applied to the actions of the United States with respect to individuals outside the United States." Congress does not here seek to extend or to expand Article 33, it seeks only enforce it.

The Reagan Administration, too, considered itself bound by Article 33 when it began interdicting Haitians in 1981. In an opinion issued by the Office of the Legal Counsel, the Assistant Attorney General explicitly considered the obligations imposed on the U.S. government by the Protocol.¹³ According to that opinion, Article 33 applies to refugees interdicted on the high seas and mandates that "individuals who claim that they will be persecuted for one of these [enumerated] reasons must be given an opportunity to substantiate their claims."¹⁴ In fact, the Reagan Administration did implement a screening procedure. While the procedure was correctly criticized as

¹³Proposed Interdiction of Haitian Flag Vessels, 5 Op. Off. Legal Counsel 242, 248 (1981).

¹⁴Id.

inadequate,¹⁵ it reflected at least an acknowledgement of the existence of this obligation.

When the governmental Executive Committee of the Office of the United Nations High Commissioner for Refugees (UNHCR) has been called upon to interpret Article 33, it has found that the protection against non-refoulement extends to refugees seeking to enter a country. For example, it has:

reaffirm[ed] the fundamental importance of the observance of the principle of non-refoulement -- both at the border and within the territory of State -- of persons who may be subjected to persecution if returned to their country of origin irrespective of whether or not they have been formally recognized as refugees.

Similarly, in detailing the procedures to be used when determining refugee status, UNHCR has explicitly concluded that:

The competent official (e.g. immigration officer or border police officer) to whom the applicant addresses himself at the border or in the territory of a Contracting State . . . should be required to act in accordance with the principle of non-refoulement. . . .¹⁶

The UNHCR has gone so far as to "appeal[] to States to grant first asylum to

¹⁵Lawyers Committee for Human Rights, Refugee Refoulement: The Forced Return of Haitians Under the U.S.-Haitian Interdiction Agreement (1990).

¹⁶General Conclusions, Conclusion No. 8 (XXVIII), (Text in Conclusions on the International Protection of Refugees (published by UNHCR)(hereinafter UNHCR Conclusions)(emphasis added).

refugees and displaced persons rescued at sea.¹⁷ The UNHCR has clearly recognized that the right of non-refoulement protects refugees before they enter the country of asylum — ■ undisputable rejection of the President's assertion that the right of non-refoulement does not extend to persons located outside the United States. That push-backs and other forms of rejection before asylum seekers reach the border constitute refoulement is ■ broadly accepted principle.¹⁸

The logic here is straightforward. The right of non-refoulement becomes ■ hollow promise if nations can circumvent it by stopping the refugees before arrival. This Administration's interpretation of Article 33 and the right of non-refoulement render these precepts meaningful only if nations are unable or unwilling to stop refugees before they reach their territories. Surely, this is ■ perverse outcome which this legislation should

¹⁷Conclusion No. 2 (XXVII), Functioning of the Sub-Committee and General, UNHCR Conclusions supra note 16 (emphasis added).

¹⁸In addition to Article 33 of the Protocol, other international instruments and expressions of state practice affirm the principle of non-refoulement for those seeking entry after crossing an international border. Article II of the 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa prohibits "rejection ■ the frontier, return or expulsion, which would compel him to return to, ■ remain in, ■ territory where his life, physical integrity, or liberty would be threatened." 1001 U.N.T.S. 45, 48. Other agreements and accords specifically recognizing the protection against rejection and forcible return include Comm. of the Ministers, Eur. Consult. Ass. Rec. No. R(84)1, Jan. 25, 1984 and Res(67)14, June 29, 1967; American Convention on Human Rights, supra note 19; and the Asian-African Legal Consult. Comm., Principles Concerning Treatment of Refugees art. VII(3), (1966) reprinted in UNHCR, Collection of International Instruments Concerning Refugees 201 (1979).

avoid.

3. Minimum international standards must be observed in order to "determine" whether an individual is a refugee under the proposed legislation.

The minimum international standards incorporated by reference in the proposed legislation are designed to ensure that a refugee screening process is fair and those genuinely in need of protection will be identified and protected from refoulement. Failure to heed these principles risks the return of refugees to places where they may be persecuted.

First, asylum seekers must be provided with information concerning criteria and procedures. To participate meaningfully in the process, they must understand it — its criteria, methods, and procedures. Understanding the language is crucial to understanding the process: asylum seekers must be provided with adequate translation and interpretation. The UNHCR requires that "[t]he applicant should receive the necessary guidance as to the procedure to be followed."¹⁹

The UNHCR has taken this position not only its Executive Committee Conclusion, but

¹⁹Conclusion No. 8 (XXVIII), Determination of Status, UNHCR Conclusions, supra note 16.

also in a Note on fair and efficient procedures issued by UNHCR in 1990 in connection with a judicial challenge in the Hong Kong Court to the screening and review procedure for Vietnamese under the Comprehensive Plan of Action. This Note is significant because it sets out UNHCR's own interpretation of standard procedures necessary to ensure fairness.²⁰ The UNHCR has also described the services of a translator as one of the "necessary facilities" for the presentation of an asylum claim.²¹ The importance of quality translation was reiterated in the Note.²²

Second, asylum seekers must have a meaningful opportunity to contact the UNHCR or a qualified attorney or agency. The UNHCR requires that "[a]pplicants should also be given the opportunity, of which they should be duly informed, to contact a representative of UNHCR."²³ In its Note, UNHCR describes the importance of effective representation in these terms:

Given the vulnerable situation of an asylum seeker in an alien environment, it is important that he/she should on arrival receive appropriate information on how to submit his/her

²⁰See generally Lawyers Committee for Human Rights, Uncertain Haven: Refugee Protection on the Fortieth Anniversary of the 1951 United Nations Refugee Convention, at 21-23 (1991)(hereinafter Uncertain Haven).

²¹Conclusion No. 8 (XXVIII), Determination of Status, UNHCR Conclusions, supra note 16.

²²Uncertain Haven, supra note 20, at 22.

²³Conclusion No. 8 (XXVIII), Determination of Status, UNHCR Conclusions, supra note 16.

application. Such advice is most effective on an individual basis and is provided in many countries by legal counselling services. . . .²⁴

For that reason, UNHCR includes legal representation as one of the "necessary facilities" for a fair determination.²⁵

Third, asylum seekers must be provided with a full and fair opportunity to articulate an asylum claim before a trained adjudicator in a non-threatening environment. According to UNHCR, the decision-makers must be "competent" -- that is, they must "have clear instructions for dealing with cases which might come within the purview of the relevant international agreements," so that they can "be required to act in accordance with the principle of non-refoulement."²⁶ The UNHCR Handbook requires that the application be determined by "qualified personnel having the necessary knowledge and experience, and an understanding of an applicant's particular difficulties and needs."²⁷ Such "necessary knowledge" includes information about both the refugee protection

²⁴Uncertain Haven, *supra* note 20, at 21.

²⁵*Id.*, at 22.

²⁶Conclusion No. 1 (XXVIII), Determination of Status, UNHCR Conclusions, *supra* note 16.

²⁷UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status Under the 1951 Convention and 1967 Protocol relating to the Status of Refugees (Geneva 1979), at para. 190.

criteria ~~and~~ about conditions in the asylum seeker's home country.

Fourth, the screening process used must be full and fair. If the screening process is not reliable due to lack of procedural protections ~~or~~ misapplication of criteria, the return of any asylum seeker would directly contravene the ~~most~~ basic aspect of international refugee law: non-refoulement. The adjudicator is required ~~to~~ to give ~~the~~ the applicant the benefit of any doubt as to whether he ~~or~~ she may face persecution — if there is a question about whether the applicant is a refugee, he ~~or~~ she must ~~be~~ given protection. This requirement is reflected in the UNHCR Handbook, which states:

while the burden of proof in principle rests ~~on~~ on the application, the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner.²⁸

A fair screening process requires an interview with the applicant to hear and ~~review~~ the claim. The UNHCR has termed "the quality of [the] interview" ~~to~~ be "crucial to a proper determination of the claim."²⁹ The UNHCR places the burden on the interviewer to guarantee that the interview is "comprehensive."³⁰

Fifth, asylum seekers must have ~~an~~ opportunity for a meaningful administrative

²⁸Id. at paras. 196-205.

²⁹Uncertain Haven, ~~supra~~ note 20, at 22.

³⁰Id.

review by a separate centralized body specializing in refugee status determination. The UNHCR could not be any more clear about this requirement:

If the applicant is not recognized, he should be given a reasonable time to appeal for a formal reconsideration of the decision, either to the same or to a different authority, whether administrative or judicial, according to the prevailing system.³¹

In all cases, the review must be independent and fair. The UNHCR has specifically highlighted certain factors as crucial to a fair review: the applicant must be able to appear before the review body, the applicant must have the opportunity to obtain legal representation for the review, the criteria set forth in the UNHCR Handbook must be applied in a "consistent and rational" manner, and written reasons for the decision must be made available to the applicant.³²

The procedures — or lack thereof — provided for in the Kennebunkport Order meet none of these minimum standards. The determination required in the International Refugee Protection Act of 1992 must meet these minimum international standards.

³¹*Id.*

³²*Uncertain Haven*, *supra* note 20, at 22-23.

4. Conclusion

We thus strongly urge enactment of this proposed legislation to end continuing violations by the Executive Branch of the fundamental human rights of Haitian refugees. The proposed legislation will not affect the President's authority concerning the entry of aliens into the United States; nor will it interfere with the Executive's regulation of immigration policy. However, enactment will correct the Administration's politically expedient misinterpretation of Article 33 of the 1967 Protocol. It will also ensure that this country observes the international consensus to protect refugees from return to loss of liberty and life.

Mr. BERMAN. I don't have the latest draft of Solarz' bill. I am a cosponsor of it. But you say it prohibits the new policy. It states—without, presumably, conceding that this is a change—that the obligations of our law and international law on us exist outside of the boundaries of the United States, and it now will put in fair procedures, including procedures and criteria of the U.N. High Commissioner of Refugees.

To deal with some of the problems of the screening that existed even before the late May reversal of policy?

Mr. HELTON. I think this provision would deal with many of those problems. The prior procedures have been persuasively criticized as insufficient and unreliable, and I think if these minimum standards which are declared by the Office of the High Commissioner for Refugees are adopted and followed, that many of those problems will be dealt with.

Mr. BERMAN. Is it correct to conclude, whatever problems you had with the procedure at Guantanamo, that the use of specially trained asylum officers of INS there gave people a better opportunity in the context of screening to make a case that they arguably were refugees than using the consular officers in Port-au-Prince?

Mr. HELTON. That was clearly the case. The Asylum Officers of the Immigration and Naturalization Service have received special training and frankly benefited from a humane organizational ethos which I think in large measure explains the relatively high recognition rate, at times almost 40 percent, during the processing at Guantanamo.

Mr. BERMAN. I want to ask the Rabbi a question, but let me just ask you one last question here. Would you say that the Solarz bill in a sense answers the call of the judge for congressional action—it deals with what he views, I guess, as not a self-executing legal obligation.

Mr. HELTON. It would. The court, we feel, considered itself unnecessarily constrained in its decision. However, this legislation would make—

Mr. BERMAN. You feel it was unnecessary?

Mr. HELTON. That is right. But this legislation would make it absolutely clear that it is the law to prohibit the return of refugees in any manner whatsoever, including high seas interception. Congress could enforce the law in an appropriations context, and a Federal court could enforce it in behalf of an individual asylum seeker.

Mr. BERMAN. Another way of looking at it—I was talking with the professor before he left—is that this is like a contract, they have an agreement, who is getting what. He talked about *quid pro quo*. But I guess in reality you could view that obligation as the implementation in this interdiction program of our Article 33 obligations, and also that the Haitians on those boats, the third-party beneficiaries—I mean, don't they have any case to be made in the context of enforcement? It is not for two governments to decide without any consideration of the interests of the beneficiaries.

Mr. HELTON. In contractual terms, they might well be considered third-party beneficiaries. In human rights terms, they would be considered those owed protection as refugees under the governing treaties.

Mr. BERMAN. Rabbi, I thought your testimony was great. The only question, you articulated a policy which goes far beyond this; in a sense it is a critique of our immigration laws fundamentally, because we impose limits.

Now, you could view that as an effort to order the process, but everybody goes through balancing these underlying questions and the practical circumstances. The administration's recent balancing I find somewhat short of appropriate, to say the least. But in the context of what we are being asked to do here, one does not need to go anywhere near as far as you suggested, at least in parts of your testimony, in terms of how we allow people to come into this country, even though part of me agrees with you.

Rabbi LOOKSTEIN. I recognize that I carried the point to an extreme. I think, if anything, it shows how unfortunate the policy is right now, since May 24. But I would defend on religious, ethical grounds, the idea that if people's lives are at risk. It doesn't really make much of a difference whether they are at risk because of political persecution or severe economic privation.

I think enough is known about the poverty of Haiti and the starvation rate and the disease rate to say that people are running away from that country not only because they are afraid of persecution, but they are afraid of dying for other reasons, that a country that we all take pride in because of its compassion and feeling and generosity would have a hard time justifying, saying, Well, you know, we can't solve this problem.

A case, of course, could be made that everyone in the world would like to come to America because in many respects life here is much better than it is in other places. But we are not talking about life being much better. We are talking about people who may be at severe risk. And I think when people are at severe risk, the principle of "don't stand idly by" comes to play, and one should follow it.

And then there is the further idea, when I was leaving here, I was leaving the school of which I am also a principal, the Ramaz School in New York, and there is a gentleman who comes from Guyana, and he serves as a kind of ombudsman and doorman, knows all the kids, speaks Hebrew almost as well as some of the kids in the school. His name is *Duelnath Rambarran*. I told him I am in a big hurry and I have to run because of what I am going to do. He is not Jewish, he is black. He is, I believe, a Hindu. And he said to me, "Go and be successful, it is a big mitzvah." The word "mitzvah" means an obligation. And I think he meant more than a political issue. I think he felt that it is a matter of saving lives.

And when you have a mitzvah, an obligation, it doesn't have to be fun. It can be painful, it can be difficult, it can be dislocating. But that is why I said in the testimony, it is not our country. This is God's world. We happen to be living here. Others have a right to live here, too. And from an ethical point of view, we should be extraordinarily careful how we limit it.

And, of course, if we are limiting it when people are in danger of their lives because of persecution, then we don't have a leg to stand on at all.

I think one could carry the argument even a little bit further. But I am not a Congressman who is able to introduce legislation, nor a member of the State Department that has to maintain it.

Mr. BERMAN. Thank you very much.

I am going to include statements in the record, submitted by the U.S. Committee for Refugees¹ and the Evangelical Lutheran Church of America.²

And at this point, thank you both very much for coming and sharing your views with us, and I think helping to charge us up to get on with all of this.

Rabbi LOOKSTEIN. I must say, Mr. Chairman, I am grateful for the opportunity, for the fact that there are these hearings and that you wanted to hear from a religious point of view, as well as legal, and academic points of view.

Mr. BERMAN. Thank you very much.

[Whereupon, at 5 p.m., the subcommittee was adjourned.]

¹ See appendix 1.

² See appendix 2.

MARKUP OF H.R. 5360, INTERNATIONAL REFUGEE PROTECTION ACT OF 1992

WEDNESDAY, JUNE 17, 1992

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
SUBCOMMITTEE ON INTERNATIONAL OPERATIONS,
Washington, DC.

The subcommittee met, pursuant to call, at 1:15 p.m. in room 2255, Rayburn House Office Building, Hon. Howard L. Berman (chairman of the subcommittee) presiding.

Mr. BERMAN. The Subcommittee on International Operations will come to order. We are meeting today to mark up H.R. 5360.

[H.R. 5360 follows:]

102D CONGRESS
2D SESSION

H. R. 5360

To reaffirm the obligation of the United States to refrain from the involuntary return of refugees outside the United States.

IN THE HOUSE OF REPRESENTATIVES

JUNE 10, 1992

Mr. SOLARZ (for himself, Mr. HAMILTON, Mr. GILMAN, Mrs. MORELLA, Mr. RANGEL, Mr. LEWIS of Georgia, and Mr. BERMAN) introduced the following bill; which was referred jointly to the Committees on Foreign Affairs and the Judiciary

A BILL

To reaffirm the obligation of the United States to refrain from the involuntary return of refugees outside the United States.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the "International Refugee
5 Protection Act of 1992".

6 SEC. 2. ADHERENCE TO INTERNATIONAL LAW REQUIRE- 7 MENT OF NONREFOULEMENT.

8 (a) CONGRESSIONAL STATEMENT.—The Congress re-
9 affirms that the obligations of the United States under

1 Article 33 of the Convention Relating to the Status of Ref-
 2 ugees (done at Geneva, July 28, 1951), as applied under
 3 article I of the Protocol Relating to the Status of Refugees
 4 (done at New York, January 31, 1967) have, since entry
 5 into force of the protocol with respect to the United States
 6 on November 1, 1968, applied to actions of the United
 7 States with respect to individuals outside the territorial
 8 boundaries of the United States.

9 (b) OBLIGATIONS OUTSIDE THE UNITED STATES.—

10 The United States Government shall not return, cause to
 11 be returned, or affect the movement in any manner which
 12 results in returning, a national or habitual resident of a
 13 country, who is outside the territorial boundaries of the
 14 United States, to the territorial boundaries of the country
 15 of nationality or residence, and no funds may be expended
 16 with respect to any such return, unless the United States
 17 Government has first determined, in accordance with fair
 18 procedures, including procedures and criteria of the Unit-
 19 ed Nations High Commissioner for Refugees, that that in-
 20 dividual is not, due to a well-founded fear of persecution
 21 about returning to such country, a refugee under Article
 22 1 of the Convention Relating to the Status of Refugees
 23 (done at Geneva July 28, 1951) as applied under article
 24 I of the United Nations Protocol Relating to the Status
 25 of Refugees (done at New York, January 31, 1967).

1 (c) OBLIGATIONS WITHIN THE TERRITORIAL WA-
 2 TERS OF ANOTHER COUNTRY.—The United States Gov-
 3 ernment shall not return, cause to be returned, or affect
 4 the movement in any manner which results in returning,
 5 a national or habitual resident of a country, who is within
 6 the territorial waters of his or her country of nationality
 7 or habitual residence, to the land frontier or territorial
 8 land of the country of nationality or residence, and no
 9 funds may be expended with respect to any such return,
 10 unless the United States Government has first deter-
 11 mined, in accordance with fair procedures, including pro-
 12 cedures and criteria of the United Nations High Commis-
 13 sioner for Refugees, that if that individual were outside
 14 the territory of the country of nationality or habitual resi-
 15 dence such individual would not be, due to a well-founded
 16 fear of persecution about returning to such country, a ref-
 17 ugee under Article 1 of the Convention Relating to the
 18 Status of Refugees (done at Geneva, July 28, 1951) ■■
 19 applied under article I of the United Nations Protocol Re-
 20 lating to the Status of Refugees (done at New York, Janu-
 21 ary 31, 1967). This subsection shall not constitute author-
 22 ity for conducting operations by the United States Govern-
 23 ment within the territorial waters of another country.

24 (d) LIMITATIONS.—

1 (1) The provisions of this section do not apply
2 to an individual if—

3 (A) such individual ordered, incited, as-
4 sisted, or otherwise participated in the persecu-
5 tion of any person on account of race, religion,
6 nationality, membership in a particular social
7 group or political opinion; and

8 (B) such individual, having been convicted
9 by a final judgment of a particularly serious
10 crime, constitutes a danger to the community of
11 the United States.

12 (2) The provisions of this section do not apply
13 to nationals and habitual residents of a country at
14 United States diplomatic and consular missions in
15 that country.

Mr. BERMAN. This bill, which was authored by our distinguished colleague on the Foreign Affairs Committee, Mr. Solarz, and co-sponsored by Messrs. Hamilton, Gilman, Dymally, and myself, seeks to clarify the minimal obligations of the United States with respect to the protection of refugees.

We had a lengthy hearing last week with the Subcommittee on Western Hemisphere Affairs, at which we heard of the administration's new policy of seizing people on the high seas or in Haitian territorial waters, and returning them to Haiti without a determination of their claim to refugee protection.

The legislation before us today, while it is general in its reach, would clearly address the problem we heard testimony about last week. This legislation is modest in its scope, and does no more than suggest that we live up to legal obligations we have already assumed by signing the U.N. Protocol Relating to the Status of Refugees, and to do what we have so long urged other nations to do in Southeast Asia.

I hope the subcommittee will see fit to approve the legislation swiftly and wholeheartedly, and I will be offering a few minor technical amendments, which have been with the concurrence of Mr. Solarz.

There are descriptions of the technical amendments in each Member's folder, and I will now yield to Ms. Snowe for any comments she may have.

[The prepared statement of Mr. Berman follows:]

SUBCOMMITTEE ON INTERNATIONAL OPERATIONS

COMMITTEE ON FOREIGN AFFAIRS

MARK-UP OF H.R. 5360, INTERNATIONAL REFUGEE PROTECTION ACT OF 1992

OPENING STATEMENT OF HOWARD L. BERMAN

The Subcommittee is meeting today to mark up H.R. 5360. This bill, which was authored by our distinguished colleague on the Foreign Affairs Committee, Mr. Solarz, and co-sponsored by Messrs. Hamilton, Gilman and myself, among others, seeks to clarify the minimal obligations of the United States with respect to the protection of refugees.

This subcommittee held a hearing last week with the Subcommittee on Western Hemisphere Affairs, at which we heard of the Administration's new policy of seizing people on the high seas or in Haitian territorial waters, and returning them to Haiti without a determination of their claim to refugee protection.

The legislation before us today, while it is general in its reach, would clearly address the problem we heard testimony about last week. This legislation is modest in its scope, and does no more than suggest that we live up to legal obligations we have already assumed by signing the U.N. Protocol Relating to the Status of Refugees, and do what we have long urged other nations to do in South-East Asia.

I hope that the Subcommittee will be able to approve this legislation swiftly and wholeheartedly.

I have a few minor technical amendments, suggested by Mr. Solarz, which I will offer. They are described and explained in the members' folders.

Ms. Snowe?

Ms. SNOWE. Thank you, Mr. Chairman.

I regret I was unable to be here for the hearing last week because of the balanced budget amendment debate on the floor of the House that was occurring simultaneously, but I do want to include my statement in the record on this legislation.

I do hope that, as your opening statement suggested, that it will be clarifying legislation and not, obviously, create any further confusion in terms of our policy and what is expected of us, of a country in living under the Geneva Convention, related to the status of the refugees.

Obviously, we all have a concern about what has been under way, and we want to live up to our obligations, obviously, and what is required of the United States. So I think we should go forward with this legislation in hopes that we are clarifying the circumstances; that it does give the administration some flexibility in enforcing this policy, because that is also imperative at the same time, and that we don't create any further problems as a result of the consideration and the passage of this legislation.

But I do think, given the current circumstances and the tragedy that has occurred with the Haitian refugees, it is important to ensure a screening process. So I will support the passage of this legislation here in subcommittee.

And I would like to include the statement of Representative Gilman, who is unable to be here, who is the primary sponsor, as well, of this legislation, along with Congressman Solarz.

Mr. BERMAN. Well, thank you very much, Ms. Snowe.

Mr. Dymally.

[The prepared statement of Mr. Gilman follows:]

PREPARED STATEMENT OF HON. BENJAMIN A. GILMAN, A REPRESENTATIVE IN CONGRESS FROM THE 22ND CONGRESSIONAL DISTRICT, STATE OF NEW YORK

Thank you Mr. Chairman. I have kept a watchful eye on developments in Haiti for many years. Last February, I accompanied the distinguished gentleman from New York, Mr. Rangell, to Haiti. After an extensive series of meetings with government officials, military officers, and private citizens, our delegation came to the conclusion that forced repatriations should halt. Our views did not prevail—although legislation passed the House, it has not moved in the Senate. Now, however, the situation is far worse.

On May 24, 1992, the Bush administration decided to force all Haitians attempting to come to the United States back to Haiti. I am deeply disappointed in this decision, and am dismayed at the consequences—on two levels. First, we are now returning Haitians that *could* be fleeing for their lives. We do not know if they are real refugees because we are not screening them at all. No interviews, no discussions, no checking facts. We are simply forcing them back into a country ruled by a military dictatorship which we do not recognize.

The second concern is for the international repercussions of this decision. The real effect of the May 24 Executive order is to endanger first asylum throughout the globe. How can we ask the Government of Bangladesh to not turn back Muslims fleeing Burmese terror? How can we ask Malaysia or Hong Kong to accept Vietnamese migrants long enough to screen them before repatriation? The answer is that we cannot—at least with a straight face. These governments—and many others—make the same points we have heard from the administration: these are economic migrants, not political refugees; we do not have the resources to handle the flow; the existence of camps is a magnet; et cetera.

I am sympathetic to the hard choices the administration faced in dealing with Haitian emigration. It is true Haitians were risking their lives by leaving in unseaworthy boats. It is true that no foreign countries have provided significant help in resettling Haitians. It may be true that Guantanamo was acting as a magnet to

draw economic refugees. And it is true that no country has done more for international refugees than the United States.

However, I believe our decision to return Haitians without screening is wrong. It is a violation of American principles and it will harm Haitians and refugees throughout the world. There are other options—such as increasing the I.N.S. presence and doing final status determinations on Guantanamo.

I have joined distinguished colleague from New York, Mr. Solarz, as an original cosponsor of H.R. 5360, the International Refugee Protection Act of 1992. I am pleased we are taking prompt action of this legislation. I hope the full committee will be able to act as promptly. I urge my colleagues to report this legislation favorably.

Mr. DYMALLY. Thank you, Mr. Chairman.

First, I just want to observe that the full committee is meeting tomorrow, and if this measure passes out of this subcommittee, perhaps you might want to prevail upon the chairman to put it on the schedule tomorrow.

Mr. BERMAN. Well, I think that is worth an effort to try to do that.

Mr. DYMALLY. Mr. Chairman, we are faced with a major dilemma in Haiti. One, tough sanctions which have been imposed have created a serious problem among the poor. The military and the bourgeoisie continue to get their caviar and champagne and expensive perfume from France and Canada and other countries; the poor are squeezed and then they leave. And as they leave because of tough sanctions, they are picked up and returned. And I don't know how we resolve that big dilemma.

In addition to that, while these sanctions are in force, Haiti is losing all of its industries to the very people who imposed sanctions, the OAS. The factories are moving to neighboring countries in the region, and so they are faced with a major problem when this matter is resolved of restructuring their entire economy.

And I don't know where we go from here, but, obviously, I support this legislation to clarify our policy in the area. But we need to address this whole question about resolving the dilemma between the democrats, small "D," and the military in Haiti.

Mr. BERMAN. Well, thank you very much, Mr. Dymally, and I agree with you, there are much broader questions than this legislation seeks to deal with. And as we heard at the hearing, there are no doubt people fleeing from Haiti in part because of the economic squeeze that comes from all the turmoil added to it, being the embargo.

The sole purpose of this proposal is to ensure that there is some process, some determination made, that among those people fleeing, there is no doubt people who are fleeing not simply for economic reasons, but because of the conditions and the situation in Haiti which involves, in many cases, a well-founded fear of persecution because of political views and activities; people in hiding, people subject to torture, to threats, to intimidation, to violence.

And we just want to ensure in this legislation that there is a process by which we are making sure, in accordance, as Ms. Snowe said, with our obligations under international conventions, that we are not sending back people who have that well-founded fear of persecution.

So with that, I would offer for the subcommittee's consideration a series of technical amendments which make no meaningful, seri-

ous changes in the legislation. Those changes are before you and I would ask for the——

Mr. DYMALLY. Move for the adoption of the amendments.

Mr. BERMAN. The technical amendments to the bill are before us. Does anyone wish to speak to them?

If not, all those in favor say aye. Opposed? The ayes have it. The technical amendments are adopted.

[The technical amendments follow:]

AMENDMENT TO H.R. 5350
OFFERED BY MR. BELMAN

Page 2, lines 17 through 19, strike "has first determined, in accordance with fair procedures, including procedures and criteria of the United Nations High Commissioner for Refugees," and insert "determines in accordance with fair procedures".

Page 2, lines 20 and 21, strike "due to a well-founded fear of persecution about returning to such country," and insert "due to fears about returning to such country,".

Page 3, line 10 through 13, strike "has first determined, in accordance with fair procedures, including procedures and criteria of the United Nations High Commissioner for Refugees," and insert "determines in accordance with fair procedures".

Page 3, lines 15 and 16, strike "due to a well-founded fear of persecution about returning to such country," and insert "due to fears about returning to such country,".

Page 4, lines 9 and 10, strike "serious crime" and insert "aggravated felony (as defined in section 101(a)(43) of the Immigration and Nationality Act)".

Technical amendments

1. **Description:** In the portions dealing with the determination, required before return, that the individual is a not a refugee, we eliminate reference to UNHCR procedures but keep references to "fair procedures."

Actual Change.

Lines 17 to 19 on page 2: strike "has first determined, in accordance with fair procedures, including procedures and criteria of the United Nations High Commissioner for Refugees," and insert "determines in accordance with fair procedures"

Lines 10 to 13, page 3: strike "has first determined, in accordance with fair procedures, including procedures and criteria of the United Nations High Commissioner for Refugees," and insert "determines in accordance with fair procedures"

Explanation: Because UNHCR procedures provide strong authority as to what is fair, including explicit reference to them is somewhat redundant. Moreover, we did not want to imply that we were excluding other procedures that may also be persuasive authority as to what is fair.

2. **Description:** Also in the portions dealing with the determination, we eliminate a redundant reference to the criteria for refugee status.

Actual change:

Lines 20 and 21, page 2: strike "due to a well-founded fear of persecution about returning to such country," and insert "due to fears about returning to such country,"

Lines 15 and 16: strike "due to a well-founded fear of persecution about returning to such country," and insert "due to fears about returning to such country,"

Explanation: The current draft says that if, due to a well-founded fear of returning to a particular country, the person is a refugee, then he or she may not be returned. However, "well-founded" fear is already contained in the refugee definition, so separately including it in the text is redundant and somewhat confusing.

3. **Description:** In the limitations clause, we change "particularly serious crime" to "aggravated felony."

Actual change:

Lines 9-10, strike "serious crime" and insert "aggravated felony (as defined in section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43))."

Explanation: This is consistent with the Immigration and Nationality Act definition in this area.

Mr. BERMAN. The Chair will be prepared to entertain a motion to pass the bill as amended out of subcommittee.

Mr. DYMALLY. So moved.

Mr. BERMAN. Motion is before us.

Ms. SNOWE. Seconded.

Mr. BERMAN. Seconded. Do we need a second?

Ms. SNOWE. You have got one now.

Mr. BERMAN. Anyone wish to speak?

If not, all those in favor, say aye. Opposed? The ayes have it. The subcommittee passes out H.R. 5360, as amended, to full committee, and I will be in contact with the chairman to see about quick handling of the measure.

The meeting is adjourned.

[Whereupon, at 1:20 p.m., the subcommittee was adjourned, subject to the call of the Chair.]

APPENDIX 1



U.S. COMMITTEE FOR REFUGEES

1025 Vermont Avenue, N.W., Suite 920
Washington, DC 20005
Tel: (202) 347-3507 Fax: (202) 347-3418

Informing the public since 1958

June 10, 1992

Rep. Howard L. Berman, Chairman
Subcommittee on International Operations

Rep. Robert G. Torricelli, Chairman
Subcommittee on Western Hemisphere Affairs

Dear Sirs:

The U.S. Committee for Refugees asks that our recent report, *Stone of Refuge: Haitian Refugees in the Dominican Republic*, be included as part of the written record of your joint hearing on U.S. Policy Toward Haitian Refugees. We feel that this report adds vital information to the development of a U.S. Policy response to the refugee crisis.

The Bush Administration argues that Haitians leaving by boat are merely economic migrants seeking jobs in the United States, whereas persons fleeing political persecution could more easily cross the open border into the Dominican Republic. On the contrary, *Stone of Refuge*, based on a site visit to the Haiti/DR border, shows the Dominican Government to treat Haitian asylum seekers with open hostility. The Dominican Government has not granted refugee status to a single Haitian. On the day that the U.S. government announced that the DR had agreed to keep its border with Haiti open and to screen Haitians for refugee status, a church holding Haitian refugees was surrounded by armed Dominican soldiers seeking to arrest them. In truth, no screening exists; Haitians have been forcibly repatriated and arrested upon return to Haiti. General Alegria, responsible for policing the border region, was completely unaware of the so-called "open border" and told USCR, "We are sending people back who we catch."

Stone of Refuge also assesses the implications of President Bush's May 24 Executive Order authorizing the return of Haitian boat people without screening for refugee status. The U.S. argument that we have no more room for the Haitians sends a clear signal to the Dominican Government. The DR would need little or no pretext to summarily return all Haitians seeking refuge there as well as thousands of political refugees who are in hiding in the cane fields and elsewhere within the DR. If they take this step, will the United States be in any position to protest?

We appreciate both of your efforts to bring a modicum of justice to the treatment of Haitian asylum seekers. We fear not only for the lives of the Haitians who are being forcibly returned to Haiti today, but for the lives of potentially millions of refugees for years to come who are likely to be denied asylum by other countries following the dangerous precedent now being established by the United States.

The U.S. Committee for Refugees is a nonpartisan, nongovernmental organization which, for 34 years, has defended the rights of refugees and asylum seekers worldwide.

Sincerely,

A handwritten signature in dark ink, appearing to read "Roger P. Winter", with a stylized flourish at the end.

Roger P. Winter
Director

**STONE OF REFUGE:
HAITIAN REFUGEES IN THE
DOMINICAN REPUBLIC**

Robin Kirk

June 1992

Robin Kirk, a consultant to the U.S. Committee for Refugees, is a journalist who has been widely published on human rights issues in Latin America. This report is based in part on Kirk's USCR site visit to the Dominican Republic in March 1992.

Editors' Note: The refugees interviewed by Robin Kirk in the Dominican Republic all gave their permission to have their names used in this paper. USCR has chosen not to do so for their protection. Transcripts of the interviews are on file at the USCR office.

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Stone of Refuge: Haitian Refugees in the Dominican Republic

The southern door (of the first Catholic Church of the Americas) is called the Door of Pardon...where a cross in bas-relief was a sign of hope for the politically persecuted at a time when there were no international agreements or diplomatic embassies. This political right was born when one prison escapee, chased by a soldier, managed to embrace one of the stones that was to be used in its construction. The soldier tried to arrest him, but a priest passed and took the man to the Bishop who investigated and proved that the man was politically persecuted. The Bishop then sent him safely from the country.

Santo Domingo: Key to the Western Indies
by Carmenchu Brusloff and Juan Alfredo Blaggi

For years, Haitians have considered the Dominican Republic a hostile and dangerous destination. There, they have been exploited, abused, pressed into forced labor, or chased out, depending on the climate of the moment. Despite long-standing tensions between the two nations and continuing mistreatment of Haitians in the Dominican Republic (DR), ■■■■ Haitians escaping political repression have now fled across the international line dividing the Island of Hispaniola. Today, although relatively few have been formally recognized by the UN High Commissioner for Refugees (UNHCR) as refugees, a potentially much larger number may be hiding among the thousands of Haitians who migrate annually to cut cane. While no definitive study of refugee numbers has been conducted under current circumstances, church and development groups estimate that this latter group may number as high ■■ 23,000.

No Haitian has been accepted as ■ political refugee by the Dominican government; it has treated the few who have made formal applications for official status with open hostility. Some have been placed under arrest, and threatened with *refoulement*, the forced return of a refugee. Others

have been summarily repatriated by the Dominican Army, and have subsequently been arrested by the Haitian military. According to Dominican press reports, the government rejected a U.S. request in May to establish ■ border camp for between 10,000 and 15,000 Haitians. Despite promises made to the U.S., no border "screening system" to evaluate claims for asylum has been established.

At the same time, the few refugees formally recognized by UNHCR complain that their applications for asylum face long delays and that their basic needs, like clothing and medical care, ■■■ not being met. Although UNHCR met with Dominican aid groups immediately after the September coup to prepare for ■■ expected flood of refugees, in practice, its treatment of Haitians seeking asylum, although well-intentioned, must so far be considered ■ failure. No trained UNHCR protection officer is stationed in the DR, and no effort has been made to monitor the border area or to set up an office to evaluate claims for asylum. The Dominican non-governmental organization contracted by UNHCR to service the refugees who manage to locate its Santo Domingo office does not even employ ■ Creole speaker. Therefore, that only about 60 persons

have been provided refugee documents by UNHCR says more about the incapacity of the UNHCR office than it says about the actual number of refugees in need of protection. That the UNHCR office has only forwarded 11 of those cases to the Dominican government says more about the Dominican Republic's hostility to the consideration of asylum claims than ■ their legitimacy. Under the current circumstances, the 150 petitions for refugee status received by the UNHCR office between January and February 1992 and the current monthly average of 65 applications for refugee status can only be considered ■ small fraction of the number of vulnerable Haitians in the Dominican Republic.

For Haitian refugees, hostility ■ and neglect mean that fear, uncertainty, and physical hardship are everyday companions. ■■■■ Haitian refugees ■ the DR are poor people from rural areas in the north who participated in community-level pro-Aristide organizing. A subgroup could be categorized ■ local intellectuals: for instance, ■ journalist, ■ peasant union lawyer, and ■ topographer, all employed in provincial towns. Most fled their homes suddenly, unable to pack. They ■■■■ hunted by the military and paramilitary groups for their activities, and escaped after learning their names were on lists made by the Army and *chefs de section*, local police sheriffs, or by former *Tonton Macoutes*, paramilitary thugs who operated during the Duvalier-family dictatorship, and who have come to life again since the overthrow of Aristide. They crossed the DR-Haitian border without ■■■■ or permission, ■■■■ walking up to 18 hours to avoid detection. Many paid bribes to border officials of both countries ■ order ■ ■■■■. Despite their convincing claims for ■■■■ as political refugees, however, most remain in legal limbo—without official permission to remain in the DR and with only marginal assistance from UNHCR.

Groups that work with Haitians say many who have political fears do not declare themselves ■ refugees for fear of bad treatment and forced repatriation, and instead hide themselves among the thousands of Haitians who work sugar cane. In 1991, an estimated 7,000 Haitians were forcibly repatriated after the sugar cane harvest. Anti-Haitian sentiment and fear of violence caused between 25,000 and 50,000 Haitians ■■■■ leave voluntarily. According to a coalition of church-related groups working with sugar ■■■■ cutters, at

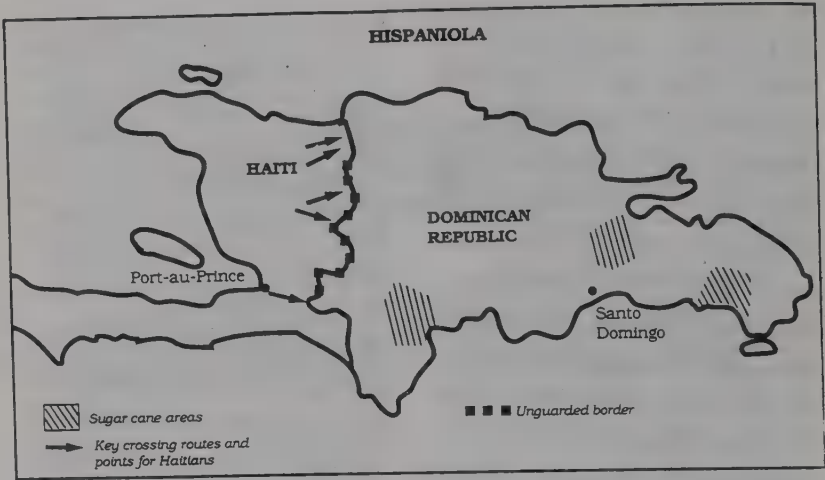
least 23,000 of those workers have since returned to the DR because of political violence in Haiti and are in need of special protection and assistance.

In general, Haitians try to avoid the DR because they fear bad treatment—including forced labor—or summary expulsion. They believe that Dominican officials routinely cooperate with Haitian authorities in returning dissidents for arrest. ■■■■ Haitians are also aware of the general climate of hostility towards Haitians, and the history of abuse, including the massacre of up to 20,000 Haitian cane cutters in 1937 by the Dominican Army. Pro-Aristide Haitians widely believe that coup leaders received at least implicit support in the DR, and that paramilitary groups linked to the Haitian Army can cross freely into the DR.

This report argues that the Haitians currently seeking asylum in the DR are in urgent need of support from international refugee organizations, including UNHCR, and from the Dominican government. At the same time, the U.S. position on Haitian refugees—asserting that economics is the prime factor in the choice between ■ dangerous crossing to the United States and the trek over the Haiti-DR border—fails to take into account the well-founded fear Haitians have of the DR. As writer Alistair Reid has noted, "It's not surprising that Haitians in their despair choose to chance the open sea rather than look toward the forbidding frontier to the east." The U.S. must reverse its policy of summarily repatriating all Haitian boat people, especially in the light of the chill effect this policy has on the willingness of other countries—including the Dominican Republic—to aid Haitian refugees.

A HISTORY OF TENSION

To understand why more Haitians do not often choose the DR as a place of refuge, it is important to begin with the complex history of these two countries. Relations between Haiti and the Dominican Republic have long been characterized by political and racial tension. Haiti was initially part of the territory claimed by Christopher Columbus for Spain in 1492. With richer colonies in Mexico and Peru, however, the Spanish lost interest in the island. They ceded its western third to France in 1697. With the native population of Taino (Arawak) Indians wiped out, both the Span-



fish and French imported West African slaves to work the sugar cane. They soon outnumbered the European population. In Haiti, former slaves mounted a protracted rebellion that eventually defeated the French, and led in 1804 to the foundation of the first independent Latin American country and the world's first black republic.

Three years earlier, however, former slave and Haitian military leader Toussaint L'Ouverture had marched into the DR's capital at Santo Domingo, putting the island under Haitian rule for five years, until the Spanish reasserted control. The Haitians invaded again in 1822, ruling the island until rebels forced them out in 1844. Turmoil and continued threats from Haiti continued until Dominican independence in 1865. In the DR, the Haitian occupation is remembered as a time of abuse and extreme poverty.

The United States occupied both countries (Haiti from 1915 to 1934 and the DR from 1916-

1924). In the DR, the U.S. withdrawal was followed by the election of Gen. Rafael Trujillo, a strongman whose repressive style was paired with substantial material achievements for the Dominican people. It was Gen. Trujillo who, after a dispute with the Haitians, ordered the killing in 1937 of between 15,000 and 20,000 Haitians, primarily sugar cane cutters. Men, women, and children were detained by Army soldiers, marched into the fields, and killed.¹ The event, known as "El Corte", (The Cutting) provoked little international outrage at the time, although it remains a living memory among Haitians today, and a reminder of their vulnerable status. Although the DR eventually paid an indemnization, the amount per worker was estimated at \$.50--the amount Haitians still say a Haitian life is worth in the DR.

According to Dr. Carmen Amelia Cedeño, a lawyer who has studied the legal status of Haitians in the DR, the importation of Haitian laborers, most black, coincided with the state's efforts to "whiten" ("blanquear") the Dominican people. Laws favored the immigration of whites, while that of blacks was

¹Also killed was Episcopalian minister Charles Barnes, an American.

actively discouraged. "At the same time as they encouraging the importation of *braceros* for the hard tasks of the cane cutting," she points out, "they put [them] in the way of non-Caucasians to establish themselves within the territory of the DR."

In addition to legal discrimination, Dominican culture also values "whiteness" over black skin. Although there are many black Dominicans, as people they tend to be lighter-skinned than Haitians, reflecting their more mixed European, African, and indigenous heritage. Although Dominican society is in many ways very tolerant about race, Dominicans of Haitian descent do face open racism. It is rarely overt, yet pervasive in society. For instance, one of the DR's political figures, José Francisco Peña Gómez, whose political opponents "accuse" him of having Haitian parents who lived on a *batey*. During rallies last year, Peña Gómez was met with graffiti reading, "Make him say 'parsley.'" (*Que diga 'perejil'*), a reference to "The Cutting," when Haitians were singled out based on their inability to pronounce the Spanish "j".

Currently, Dominican authorities estimate the resident Haitian population at over one million. However, others have pointed out that this figure probably includes Dominico-Haitians as well as the children of Haitian workers, who are by law Dominican if born in the DR. More reasonable estimates put the total Haitian population in the DR at between 200,000 and 400,000.

Throughout the twentieth century, leaders in both countries have tried to influence the political life of their neighbor. This has meant open hostility, as when Haitian "President-for-life" François Duvalier blew up the highway bridges from Malpasse to Port-au-Prince in 1963, to thwart a feared Dominican invasion. Such moments, however, interrupt a relationship dominated by self-interested cooperation, as was the case from 1952 until the fall of Jean-Claude Duvalier, when bilateral accords regulated the annual shipment of between 15,000 and 18,000 cane cutters to the DR for a sum to be paid to the Haitian government.

Until the election of Jean-Bertrand Aristide as president of Haiti, Haitian-Dominican relations were often quite good. Today, for instance, former Haitian dictators and former members of the *Tonton Macoutes* enjoy free movement in and out of the DR. Despite President Joaquín Balaguer's public support for a return of President Aristide, his

government provides a safe haven for Gen. Williams Régala, Gen. Henri Namphy, and former Port-au-Prince mayor Franck Romain. Romain's nickname is "Pa Ka Pa La," an old campaign slogan that means "I can't not be there." During his tenure as mayor, his personal paramilitary group participated in Army massacres, including the attack on St.-Jean-Bosco, a church, which cost 13 lives and 77 severely wounded in September 1988. At the time, Gen. Namphy was in power. This leads to the widespread belief among pro-Aristide Haitians that the current coup leaders received at least implicit support in the DR, and that groups linked to the Haitian military continue to operate freely in the DR.

Following the coup, church-funded Radio Enriquillo began a twice-daily news broadcast in Creole, for many Haitians the only source of independent news. Radio Enriquillo broadcasts from Tamayo, about an hour from the border, in a lush, gently rolling area known for its cane plantations. On February 2, seven soldiers and an officer from the DR's secret police, the National Department of Investigations (DNI), placed guards at the station for 24 hours, after which they mysteriously disappeared. Nine days later, the director of the state telecommunications office called to order the station to cease immediately its broadcasts in Creole. Written verification of this order arrived on February 14, and cited a law prohibiting transmissions threatening "international cooperation" (*concordancia internacional*).

Later, President Balaguer accused Radio Enriquillo of inciting violence, which programming director Rafael Pinera denies. "They didn't prohibit the [broadcast] in Spanish or English, just Creole," he notes. "For them, any attempt to cross the 'blockade' of information is subversive." Instead of speaking the news, the Creole broadcast is now sung with guitar music. "We can't put much information in, but the international response was so great to the attempted closing that the government has yet to try to shut that down."

In the past, human rights groups have documented cases where Dominican authorities have arrested Haitian political refugees and delivered them to Haitian authorities. For instance, the nongovernmental Dominican Human Rights Committee cites the case of Samuel Roche, who "disappeared" after Dominican police handed him over to

their Haitian counterparts in 1982. Rights monitors say members of Haitian paramilitary groups cross the border freely, and can occasionally be seen as far inside the DR as Barahona and Tamayo.

The current Organization of American States embargo on goods like gasoline to Haiti is officially observed in the DR. However, on a recent investigative trip there, USCR passed state-owned fuel trucks without license plates or registration coming to and from the border. The undersides of the trucks were coated with the white dust characteristic of Haiti's unpaved roads. "Suitcase contraband"—individuals taking across goods like sugar or flour—is common. For their part, Dominican authorities have called the current Haitian migration to the DR "the pacific invasion"—to them, a threat to sovereignty like that of the 1822 Haitian occupation. They fear that Haitians, and Haiti's problems, are a threat to their own country's fragile stability. Although the Dominican economy is much stronger than the Haitian, recent economic austerity measures required by the International Monetary Fund have dramatically cut wages and provoked shortages of necessities like fuel and, ironically, sugar.

CONDITIONS ON THE BATEYES

As the Haitian economy has floundered, the Dominican economy has found relative prosperity in sugar cane. But since few Dominicans are willing to perform the exhausting, poorly paid tasks of the *zafra*, the cutting and processing of cane, cane companies depend on Haitian labor.

This report is not intended to examine conditions in the cane fields, which organizations like Americas Watch, the National Coalition for Haitian Refugees, and the Lawyers Committee for Human Rights have amply documented. While the treatment of Haitian workers profoundly shapes both Dominican and Haitian perceptions of each other, Haitians who campaigned for Aristide—mostly poor, and from communities that have traditionally exported their young to work in the cane fields and abroad—are convinced Haitians will be treated badly in the DR. They base these fears on what they know about how cane cutters are treated. W_____ is a refugee from Cerca Carvajal, Haiti. He crossed the border in November:

We already knew that they treat Haitians like dogs here, and if he's poor, it's worse. The poor Haitians who come here and have no money, immediately they are sent to cut cane. We have come because of the political situation, not because we believed we would be treated well. For us, there was no choice.

Since the fall of Jean-Claude Duvalier in 1986, Dominicans have depended on what the Lawyers Committee for Human Rights has termed an "ad-hoc method of recruitment" for cane cutters. This method depends on "force, abduction, deceit, and national round-ups of dark-skinned 'Haitian-looking' people."

Though these workers are in the DR illegally, recruitment is carried out with the full knowledge and participation of both Haitian and Dominican authorities, particularly the military and police at the border. The human traffic is lucrative. Cane companies, including the largest, the state-owned State Sugar Council (CEA), employ hundreds of *buscones*, bounty hunters paid per worker delivered to the cane fields. In the DR, Haitians also perform the kind of menial labor reserved for undocumented Hispanic migrants in the United States: construction work, gardening, and domestic help.

Even the billion-dollar *Faro Colon*, the structure that will house a museum commemorating the 500-year anniversary of the Spanish arrival in the Americas, has been built in part with Haitian labor—poorly paid, without benefits, and prone to abuses.

Thousands of Haitians live permanently on the 400 *bateyes* that exist in the DR. There, they learn Spanish, raise families, and die. However, the great majority never attain legal residency. Without documents, children cannot attend school. Adults cannot walk freely without fear of arrest, and can be sent against their will to other, distant *bateyes*.

According to Dr. Cedeño, despite Dominican laws granting citizenship to children of Haitian parents born in the DR, it is very difficult to complete the legal documents necessary to prove citizenship. Few parents manage to do it. Haitian law recognizes children born to Haitian parents as Haitian. But Haiti does not allow dual citizenship. In effect, this situation leaves children without any nationality. "For the descendants of Haitians born

Typical batey in the Dominican Republic. This one is just an hour north of the capital, Santo Domingo.
Photo: R. Kirk



in the DR, this double nationality has meant a conflict of Haitian and Dominican nationality," she points out, "which rather than translate into the status of ■ double nationality means in many cases the real absence of any nationality."

A poll carried out by the Technology Institute of Santo Domingo (INTEC) in 1991 found that as adults, 28 of the 31 children of Haitian immigrants interviewed eventually managed to obtain some Dominican citizenship document. However, in general, they paid more for the documents, resorted more often to illegal methods to get them, and waited longer to receive them. Some of the documents were fraudulent. Possession of a valid document, however, does not guarantee freedom from abuse. Dominican citizens have had police destroy their *cedulas*, national ID cards, before their eyes before they are deported, thus rendering them stateless. In the DR, ■ document can be less important than an accent ■ skin color.

²In March 1992, the peso was stable at \$1.00 = 12.40 DR pesos.

³On Jan. 27, 1989, 46 Haitians and one Dominican soldier died when their *patana* overturned en route from Dajabón to the Rio Hatna sugar mill.

Although legislation implemented in October of 1990 (Decree No. 417-90) was supposed to end abuses, its practical benefits have been few. The decree called for official permits to be issued to Haitians who registered with the Department of Immigration. Despite an initial favorable response—according to the immigration office, more than 50,000 Haitians registered and paid 25 pesos (\$2)² for photographs and other fees—few later received credentials.

For instance, the Christian Reformed Church, the most active on the *bateyes* near Santo Domingo, encouraged its members to apply. Of the 500 members who did, however, only three received a legal document. Later, Church authorities ■ told it "was never the intention" of the Dominican government to give Haitians temporary residency.

Although the Dominican government has made some efforts to improve conditions for ■ cutters, international monitoring organizations report that abuses continue. On its mission ■ March 1992, USCR gathered evidence that Haitians were still being transported to the *bateyes* in open *patanas*, huge trucks meant to carry cut cane.³ Border authorities, like police and military, still

GLOSSARY

<i>batey</i> --	small camps for Haitian cane-cutters and their families on Dominican sugar cane farms. The <i>bateyes</i> are characterized by very poor conditions, including lack of adequate sewage and water, no schools or health clinics and cramped and filthy quarters. Although some changes have been made to improve the situation for Haitian cane-cutters, many <i>bateyes</i> remain unfit for human habitation.
<i>bracero</i> --	■ foreign laborer imported for a specific task; in the DR, this refers to Haitians who cut cane.
<i>buscón</i> --	generally, a Dominican or Haitian veteran of the cane fields who travels to Haiti to convince or force young men to come work the cane. <i>Buscones</i> are notorious for lying to Haitians in order to get them across the border. Once in the DR, the <i>buscón</i> is paid by the sugar cane companies for each worker.
<i>congó</i> --	a first-time cane-cutter.
<i>gua-gua</i> --	either a bus or car used as public transportation in the DR.
<i>patana</i> --	flat-bed truck used to haul cut cane and Haitian workers collected at the border.
<i>tap-tap</i> --	bus or pick-up truck built to carry passengers in Haiti.
<i>zafra</i> --	the cutting and processing of sugar cane, which begins in November and ends in June.

charge Haitians 70 pesos (\$6) or more to get to the cane fields, the equivalent of two days wages. Workers who leave the *bateyes* without permission risk arrest. Despite legislation meant to provide workers with contracts listing pay, term of employment, and rights, none of the cane cutters interviewed had received one.

"ORDER HAITIANS OUT"

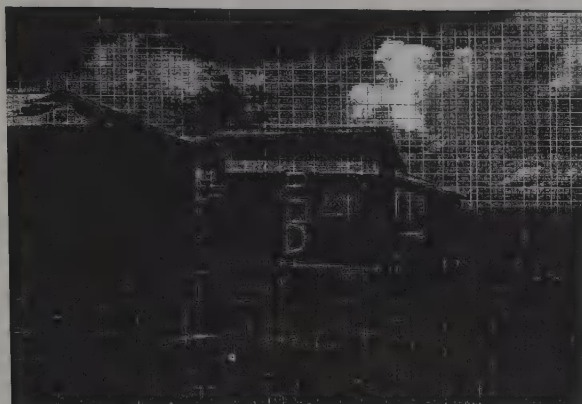
In response to international criticism for its treatment of cane cutters, the administration of President Joaquín Balaguer instituted Decree 233-91 on June 13, 1991, ordering that all Haitians under 16 and over 60 be forcibly repatriated. In a speech the next day, President Balaguer said:

We also have the right to treat Haitians...like the United States and Puerto Rico treat Dominicans [i.e., immediate deportation]... [But we choose] to treat the problem with great delicacy, with the utmost consideration for the Haitian immigrants; we are going to repatriate slowly, in accord with a plan which we are studying and in accord with the Haitian authorities.

On the surface, Decree 233-91 seemed to address two abuses: child labor and the bad treatment of Haitians once they were too old to cut cane. In fact, for years, church and human rights groups have clandestinely "repatriated" Haitian children tricked into cutting cane, sending them home or to fellow churches. The Episcopal Pastoral Haitiana told the Lawyers Committee it had successfully repatriated 20 children during the 1990-91 season.⁴

But in practice, the decree served ■ ■ carte

⁴ See Amato, Theresa A. *A Childhood Abducted: Children Cutting Sugar Cane in the Dominican Republic*. New York: Lawyers Committee for Human Rights. 1991.



Paymaster's window and informal detention area in Batey Verde, where several Haitians were held after attempting to leave the batey in March 1992.

Photo: R. Kirk

blanche to forcibly repatriate an entire population defined not by age, but by skin color--adults as well as children, newcomers and long-time residents, Dominico-Haitians and even black Dominicans, in clear violation of Dominican law as well as the American Convention on Human Rights, which the DR has ratified, and a number of other international covenants.

Some analysts saw the decree as a flaunting of international law, as well as a message to human rights groups that the Dominican government would not bow to outside pressure. Also, some political observers saw the move as a way to punish President Aristide for criticizing the DR's treatment of Haitian cane cutters, which he termed "slavery".⁵

"The repatriation was not meant to answer the criticisms of how Haitians were treated, but rather as a direct pressure on Aristide and a reply

to his criticisms and the criticisms of the foreign press and international rights groups," asserts Dr. Ramón Martínez Portorreal, president of the Dominican Human Rights Committee.

In the two months following the passage of the decree on June 13, 1991, the government estimated it detained and deported 5,335 Haitians. Others, guilty of "looking Haitian"--having black skin--were picked up during police sweeps in urban areas, placed on buses, and transported immediately to the border. They had no opportunity to appeal the deportation, return home for clothes or money, or even inform family members of their fate. Final estimates of the total number forcibly expelled hover around 7,000. The representative for UNHCR estimated that at one point, the Dominican government was expelling 500 people a week, through the border crossings of Dajabón-Ouanaminthe and Jimaní-Malpasse.

Detainees were physically abused, families forced apart, property confiscated or stolen, and legal documents proving citizenship destroyed. Many of the deportees were in fact Dominican citizens, who neither knew Haiti nor understood Creole.⁶ Families reported seeing children die for lack of medical attention during the trip and in

⁵In January 1991, the president of the Dominican Senate's Foreign Relations Committee responded: "We believe the government should take advantage of the declarations by Haiti's brand-new president by expelling all illegal Haitians from our country."

⁶A wealth of such cases was collected by the Lawyers Committee and published in September 1991.

hastily organized Haitian refugee centers. Many had their belongings confiscated by border guards, so entered Haiti destitute.

The number of Haitians who left voluntarily because they feared deportation—and a repeat of "The Cutting" of 1937—is much higher. Those who work with Haitians estimate that between 25,000 to 60,000 people returned to Haiti "voluntarily" between June and October 1991. Although not forcibly repatriated, the "voluntary" return was motivated by fear. Whole communities were abandoned. The Christian Reformed Church estimates that 50 of their 234 churches were abandoned. These Haitians had to pay for transportation to the border, an amount few could afford.

Such was the case of E., and his family. E., 56, a Christian Reformed pastor, emigrated from Haiti to cut cane in 1956. He and his wife, also Haitian, had 11 children, all born in the DR. Nevertheless, when E. heard about Decree 233-91, he decided to move the family back to Haiti:

We left here in August, when things were happening here, when the authorities were picking up the workers, the Haitians. So here, many people decided to leave as well. They remembered the time in 1937 when many people were killed... People thought the same thing was going to happen, and they packed up for Haiti, even though some were born here and had never been there. I went with my family, 16 people. Ten of my 11 children travelled along with my wife, my granddaughter, and my mother-in-law.

Although the government acknowledged some "excesses" during the repatriation, it did nothing to halt them. Rather, President Balaguer seemed to be using the sudden expulsion of poor, desperate Haitians to pressure his Haitian colleagues. One Dominican lawyer asserted that the repatriation converted the DR "into an inferno for Haitian citizens and for Dominicans converted, by decree, into people without a country."

The repatriation was halted on September 30, 1991, the day after the coup. However, the lesson for Haitians was clear. According to Father Edwin Paraison, a Haitian who directs the Episco-

pal Pastoral Haitiana, thousands of Haitians left the DR "vowing never to return."

"Haitians were expelled systematically from the DR, and were made to feel totally uncomfortable, banned," he says. "For the Haitians, it was as if they had decided to never again look at the DR, because of this treatment."

Such a sentiment was collected by the Lawyers Committee for Human Rights when it interviewed deportees in Port-au-Prince in July 1991. S., born in the DR, supported his family as a fruit seller. Before he and his family could flee with the proceeds from the sale of their home, they were arrested. All their belongings, including 8,000 pesos (\$645), were stolen:

For me, seeing that they could do this to me in Santo Domingo, a man who is legal, because I have my rights like any citizen.... But where there is government, it should not be possible that this should happen. If the [Dominican] government accepts this, legally, how they sent me here as if I were a Haitian, then I am going to become a citizen here [in Haiti] during this life of mine. I won't go again to the Dominican Republic.

For Pastor E., the September 29 coup changed everything. The juxtaposition of the forced repatriations and the coup could not have been more disheartening. He explains what happened next:

We arrived [in Haiti] on August 21. At the end of a month, there was the coup d'état and a lot of killing. On the street where we lived (in Cité Soleil), one morning more than 400 met the dawn dead. Because my family didn't know Haiti, I had to hide them in a house. After 16 days, soldiers came searching the houses for young men to press-gang into the Army. They tied them shirt-tail to shirt-tail. Well, families can't complain, the boys must go. And the boys can't yell. If they do, they are killed on the spot. My boys spent 10 days shut in the house. I had to do lots of paperwork to get them out of the country again. All the papers with the photos cost 2,500 gourdes (about \$500). Thanks to God, we again crossed the border [into the

DR]. But there, we were not allowed to cross. We waited until 4 am. On October 27, I returned to Haiti again, this time for the three girls. On December 5, I was back in the DR. Again, on the 17th, I went back to Haiti, to bring over ■ daughter with her five children, all born in the DR. On December 23, I returned again to Haiti, and brought more family.... I sold my house, my cow, for nothing. We don't even have a house now.... There are many like us, who left without thinking of return, but who now are back. I would say it is the majority.

Church workers, rights workers, and veteran cane cutters agree that the majority of those deported and voluntary returnees from before September 29, 1991 have now returned to the DR. In sharp contrast to 1990, when CEA officials reported a disappointing sugar harvest because there weren't enough cane cutters, this year the bateyes are full to overflowing.⁷

N ■ is a Christian Reformed pastor and Dominican born of Haitian parents ■ ■ batey.

Half [of those who left during the repatriation] have returned, along with many more new ones, people who never came before. The situation is linked to the coup d'état there and the embargo and the insecurity that people have right now over there. There is a great fear of remaining there.... People at the border never say they are not going to cut cane even if they don't want to. They say they will cut cane because it makes it easier to cross. They pay nothing to go from the border to the bateyes. Now, when

they get to the batey they have the big problem with the campesites, with the police and the employees of the State Sugar Corporation, who say that they must cut cane because they are in the bateyes. There is a really strict control.

Church authorities ■ ■ ■ two-thirds of those who left have ■ ■ ■ returned, along with ■ ■ ■ unusually high number of congós--first-time cane cutters. "There are now more Haitians in the bateyes than there were before the repatriation," ■ ■ ■ Dr. Hegeman.

The possibility that political refugees are mixed ■ ■ ■ with these returned cane cutters ■ ■ ■ a disturbing ■ ■ ■. Several Dominican religious and human rights groups have issued an appeal to the international community to give special protection ■ ■ ■ Haitians and Dominicans deported in 1991, then forced to return to the DR after the September coup because of fears of political violence. These groups believe that at least 35 percent of the estimated 65,000 who left for Haiti, about 23,000 people, have returned to the DR because of the violent and uncertain political situation.⁸ However, because of fear and ignorance about the option of applying for refugee status with UNHCR, they remain hidden. "We don't know how many are here, who they are, but most of them don't have the information they need to know that here in Santo Domingo there is a special office that can evaluate their need for support and that can guide those that qualify under the United Nations criteria of ■ ■ ■ political refugee," points out Rev. Paraison. "It's important to point out that they are returning to the DR in ■ ■ ■ much worse situation. They left after selling all their possessions. Now, they have returned with nothing, and with months of wages lost."

⁷In its 1991 report on the use of child labor in the cane fields, the Lawyers Committee talked to one officer of the National Federation of Dominican Sugar Workers, who said it had been hard to find cutters "because the pay is bad, they live like animals, no light, no water, no medical care."

⁸The groups that have called on the international community to extend special guarantees and aid to this population are the Episcopal Pastoral Haitiana, Union de Juventud Ecuemenica Dominicana, Ayuda Mundial, the Christian Reformed Church, the Dominican Human Rights Committee, Servicio Social de Iglesias Dominicanas, the Good Samaritan Center, and the Catholic Haitian Pastoral group.

SITUATION OF HAITIAN REFUGEES

The DR has never been a hospitable place for poor Haitians. But 1991 was an especially bad year. Although forced repatriations were halted, the attitude of the Dominican authorities toward refugees can at best be described as cautious; at worst, it is openly hostile. As shown in the preceding pages, this response is rooted in a long-standing fear of being overwhelmed by poor Haitians, a

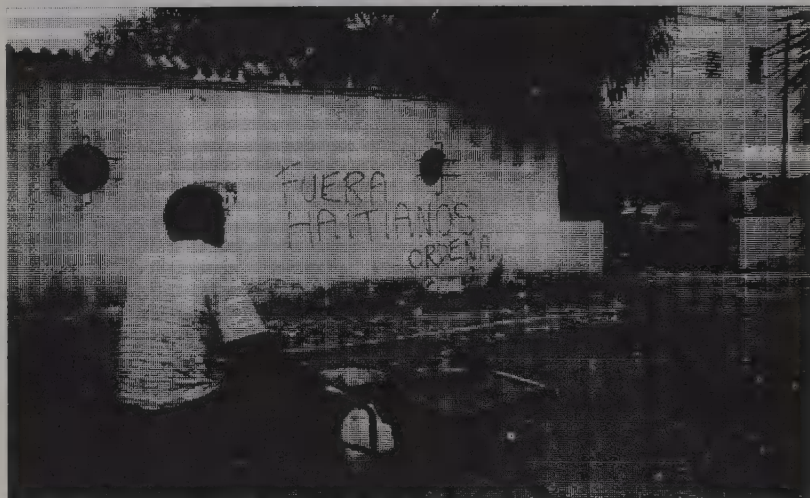
political affinity with coup leaders and, immediately before the coup, the acrimonious relationship between the two governments over the mistreatment of Haitian cane cutters.

Despite declarations by rights activists made soon after the coup that "tens of thousands" of Haitians fleeing repression were crossing the border, no evidence of such a large, concentrated movement of people is available. Rather, movement appears confined to two categories. The first and most difficult to measure is Haitians resorting to cutting cane as the only way to hide. The second, much smaller, are groups of between three and ten Haitians active in church or political activities who cross illegally and attempt to make contact either with churches or the UNHCR. For obvious reasons, the interviews collected here pertain to this latter group with one exception: the case of lawyer and

peasant activist P ____, who was forced to cut cane.

Several characteristics unite the small groups of refugees who have crossed. The majority are poor Haitians from the Central Plateau and Artibonite who participated in pro-Aristide organizing through the Catholic church, peasant organizations, and local government. After the coup, they were persecuted by the military and paramilitary groups. Most fled their homes suddenly, and were unable to take either clothing or food, or even tell their families of their destinations. Most spent from two weeks to several months in hiding in Haiti before being forced to flee.

They chose the DR because it was close and inexpensive (those boarding boats for the United States have had to pay). They crossed the Haiti-DR border illegally, some walking up to 18 hours to avoid detection. Once in the DR, some asked for



"ORDER HAITIANS OUT" Street graffiti in Santo Domingo dating from forced repatriation of Haitians in summer of 1991. Photo: R. Kirk

shelter at Catholic churches. Others searched out organizations that have traditionally worked with cane cutters.

They are adamant, however, about their status as political refugees. A was a Cap-Haitien radio announcer and church worker before the coup:

The first thing I want to say is that I didn't come here because there was hunger and misery in my country. The problem is political. I had a lot to do in my country, for instance one program that taught people how to vote... I taught them how to recognize the symbol of the political party they wanted... A group of Tonton Macoutes together with the soldiers made a list of 17 people, and there was my name... Some friends told me, "They are looking for you!" I left running. I left my wife and two children. There was not even time to tell my wife! Many of us have left our wives and children, and while we were there we were working so that they could eat. But since we aren't there now, how are they surviving?

Reverend Paraison says that another characteristic unifies these refugees. "The prototypical Haitian refugee that international organizations expect has changed, it's not the same as the intellectual who left Haiti and travelled in France and the U.S. and Europe in the sixties," he says. "Now, the people who flee for political reasons can easily be confused with economic refugees. They come from the lower classes, people who became politicized with Aristide."

About 50 Haitians have received formal refugee status from the UNHCR. Currently, only 11 have received formal status from the government. In March, Dominican Immigration issued them temporary resident cards. No Haitian has been accepted as a political refugee by the Dominican government.

These 11 refugees were kept under police and military guard from the day of their arrival in November until March 15. On that day, the guard was lifted when the UNHCR representative relocated the refugees from their rooms in a Christian Reformed church in the capital to scattered locations. Until then, the guards -- one from the Na-

tional Police and one from military intelligence -- allowed no one, not even the UNHCR, to speak privately to the refugees, and prevented the refugees from leaving their temporary residence. In that sense, they were treated not as refugees, but political prisoners in unacknowledged detention. These 11 have since been relocated to a rented house in the town of Hatna.

ESCAPE ROUTES

The quickest way to get from Port-au-Prince to Santo Domingo is through Jimani-Malpassee, a trip of six hours by private car and up to two days in the Haitian tap-taps and busses that link the capitals. Jimani-Malpassee is heavily guarded on both sides. It lies in an arid, mountainous region difficult to cross by foot. In Haiti, the road is a cloud of glue-like white dust, pitted and dug with ruts. A two kilometer-wide "no-man's land" separates the countries. In the DR, the road is a paved, two-lane highway. In November, Dominican military authorities declared an alert in Jimani because of an unusual number of unidentified small aircraft flying in from Haiti, which they believed contained some refugees.

Nevertheless, most of the refugees fleeing Haiti are too poor for private air transport, or even to buy a ticket on the Dominican vans that link Jimani to the capital four hours away. They can't use the Haitian tap-taps for fear of arrest. Although Haitian authorities do not appear to be preventing people from fleeing, refugees say they fear extortion. Others who live near the border say their names are on Army lists of Aristide supporters, and fear summary execution. Most Haitians cross on foot farther north, near Ouanaminthe-Dajabón, to avoid roadblocks and roadside garri-sons.

There, the border is the ankle-deep Masacre River. While this area is also arid, it is more densely populated, and the countryside is dotted with irrigated fields and small towns. Dajabón and Ouanaminthe live off border commerce and contraband. Dominicans cross to Ouanaminthe to purchase cheap clothes, shoes and other goods imported from the U.S. and Colombia. In turn, Haitians cross into Dajabón for food. At riverside, both Dominicans and Haitians cross freely to wash and

bathe. A mile north or south, there are no guards,

For journalist B___, the DR was a choice forced by political necessity. B___, 29, is from Carrefour, south of Port-au-Prince. He worked for the government newspaper, L'Union. After the coup, he tried to get a Dominican visa, but was told he would have to wait. He believed waiting put him in danger of arrest by the Army, which had already closed the newspaper. With a friend, he tried to reach Ouanaminthe, but was arrested:

Luckily, I had once travelled through the area and had once given one of the soldiers 10 pesos (\$1.80). He recognized me... and said to the others that he assumed responsibility for the two of us. We went on to Cap, to the house of my friend. But his mother said the soldiers had just made a list of the people in the house, so we would show up as extras and couldn't stay.

Instead, he went directly to Ouanaminthe, and crossed the border by night with a group of Haitians who regularly work in the DR. After crossing, he discovered he had hepatitis, and so treated himself with rehydrating fluids.

"I don't believe there is one Haitian who wants to come here to live," B___ emphasizes. "But when there is political pressure, the DR is right there, it's easier to come here than go to the U.S. There are also poor people here, so when a Haitian comes here it's not like going to a completely foreign country."

For L___, a Ouanaminthe topographer who was director of the border area, fleeing to the DR was the only choice. L___, 35, helped organize the Ouanaminthe chapter of the Patriotic Youth Movement, part of the national organization called the National Alliance of Popular Organizations (MJO-ANOP). After the coup, soldiers searched his house, so he fled to the hills for four days. When he returned to Ouanaminthe, a soldier ordered him to halt:

I stopped, and watched him take out his revolver. He began to shoot! I ran. Luckily, the revolver jammed and I escaped. From this moment, I was unable to return to Ouanaminthe. I was in the hills 15 days, and then I crossed the border with Chevalier Job, who was with me.

We arrived here, and one of the first things we looked for was information on what was happening in Haiti. But there are many things the Dominican press doesn't do.

L's wife was pregnant when he left, and has since had a son. But he got the news second-hand, and has had no communication with her. "I think that these statements we are making could well cost us our lives. We have attacked important people," he adds. "But it would be a betrayal to those who have died if we didn't talk, tell people the truth about what is happening."

P___ is one of three refugees so far known to UN officials obligated to cut cane. A lawyer who worked with the Peasant Movement of Papaye (MPP) in Hinche, P___, 36, knew he was in danger the moment he heard about the coup. Before Aristide's election, MPP was a frequent target of the Duvaliers and successive dictatorships. According to Amnesty International, the offices of the MPP were ransacked by the Haitian military after the coup. Several of its members have been arrested, beaten, and ill-treated since. Said P___:

After the coup that unseated Aristide, the military was very repressive in Papaye. Some friends of mine told me, "P___, be careful! You have enemies who are Tonton Macoutes and soldiers, who pursue you." They told me I had to leave Hinche.

For the next three months, P___ was in hiding, dodging Army patrols sent to capture him. Finally, he managed to return home to tell his wife and four children that he was leaving for the DR:

I have a special problem. For nine years, I have worked as a French teacher, and many of my former students are soldiers. I couldn't walk in front of a barracks, for fear of being recognized and caught. So I left Port-au-Prince at 2:30 am, and walked for 12 hours until crossing the border at 2 pm. I didn't want to go via Jimari, Pedernales, or Dajabón. I didn't want to get near the barracks. They could detain and arrest me. Finally, I picked a place near Macasta. [Macasta is midway between Dajabón and Jimari, in the center of the Dominico-Haitian

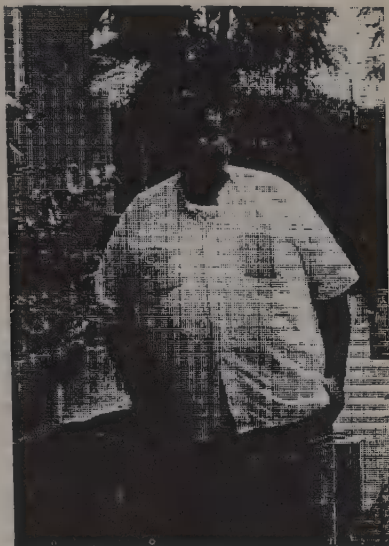
Central Mountains (Cordillera Central). An old man helped me. He was one of the ones repatriated last year, but he didn't know the border any better than me. I had come once before in 1976, to preach. I didn't have money for a bus. A motorcyclist told me he would take me to the capital for 1,000 pesos (\$81.00). But I didn't have it. Then, a man came by who was looking for Haitians to work the cane, a *buscón*, bringing men to the bateyes. Soldiers were helping, especially a sergeant. They searched me, but luckily didn't find my documents. That was how I ended up at Santa Fe, the batey Basca, and there I spent two days cutting sugar cane.... There, I met a man who knew Dr. Faublas [from the Good Samaritan Center], a gentleman who defends Haitians. He came to the batey and wrote a letter to the UNHCR. I escaped from the batey at night. You can't leave, and there is a foreman watching, as well as men who go to and fro on horses. If you are on the highway, they can catch you.

A group of three Haitians who were active in the Catholic Church and *Lavalas*, Aristide's political movement, found out about the Dominican church in Villa Los Almácigos by word of mouth. On December 13, they arrived after walking more than 24 hours across the fields. Father Leoncio Mejia Mosquera, better known as Father Ramoncito, welcomed them. "I recognized them as Christians and as people fleeing for their lives and needing help, so the position of the Church is to give refuge," he explains. "But this simple thing became very complicated once the military found out. In the space of a day, my church had been militarized. There was an army camped on the doorstep."

Although Army officers repeatedly asked for the Haitians to be turned over, Father Ramoncito declined. Once, the request was made at 2 am, leading Father Ramoncito to wonder what they planned to do with the Haitians. "With what end would they take these men in the middle of the night?" he asks. "I said I would release them over my dead body," he adds.

One of the men was J.:

My problem is with the military. The soldiers and Tonton Macoutes made a list of 17 people, including people who worked with



Father "Ramoncito," Leoncio Mejia Mosquera, of the Villa Los Almácigos church. "There was practically an army outside after the Haitians came for refuge. Although the authorities ordered them to hand them over, I told them it would only happen over my dead body." Photo: R. Kirk

Aristide's government. Then they sent the list to Port-au-Prince, and then back again ordering them to kill us. On the day the letter arrived back, thanks to God we were able to escape. We had no problems crossing the border; we didn't see anyone. We arrived at Los Almácigos on the 15th. He gave us food, and toothpaste and soap. We were there two months. There were five soldiers outside the entire time. They told us we couldn't leave.

For his part, Gen. Rafael Alegria Pérez, in

charge of the region that includes the northern border, says that he believes thousands of Haitians would cross if some control weren't maintained. "We have hundreds of kilometers of border without any control whatsoever," he said in an interview. According to General Alegria, few undocumented Haitians have been sent back. "We are sending people back who we catch, but the reality is that controlling this border is impossible."

However, General Alegria's declarations must be seen in the context of the close relationship that has long existed between military and police authorities and sugar cane companies. In the past, undocumented Haitians have not been sent back to Haiti, but rather turned over to sugar cane representatives, who force them to work the harvest. Military and police officials are paid a per-worker fee, which supplements their salaries. In fact, Amnesty International reports that five Haitian peasants who attempted to enter the DR on March 30 were arrested by Dominican soldiers and forced to pay a bribe of 200 pesos (U.S. \$16). Sent back to Haiti, they were arrested a day later by soldiers in Lalay, Savanette.

THE DAJABON

The largest single group of refugees gathered at the Catholic church in Dajabón in mid-November. By November 5, 23 Catholic lay workers and one child from Cerca Carvajal had taken shelter there under the protection of Father Regino Martinez and Father Roberto Alonso, who belong to the Dominican order.

The refugees had legitimate cause to fear political persecution. As they explain it, a woman in their town tried to take possession of land meant to go to a new church. Despite the Aristide Administration's support of their claim, the ~~authorities~~ used her wealth to bribe Army and Tonton Macoute members to seize the land. In a confrontation, several soldiers were killed and two young men taken prisoner. The day after the coup, church leaders knew that they had to leave. They feared that the ~~authorities~~ and soldiers who supported her were preparing to avenge the deaths.

M~~onsieur~~, a church leader, led a group of ten lay church workers to the DR on November 2. Like many, they had no documents, so they bribed their way past Haitian border guards. Jean explains:

Many people left in groups for the border. On November 2, we left. We realized that if we stayed, we would be captured. I was involved in TI Legliz activities, and during the presidential elections I worked the voting tables. I was working for the popular movement in the poor neighborhoods.... When we arrived at the church in Ouanaminthe, we went into the priest's house. We walked from Cerca Carvajal, two days. We explained to him what we did, and so he said there was no way we could remain in Haiti. It was too dangerous. So the father wrote a letter to the priest in Dajabón, and we crossed. There were 10 of us, and two Haitian soldiers caught us. But we paid them \$10, and they let us go.

B~~on~~ was with a separate group from Cerca Carvajal. He spent 18 days in the bush before tracking down the Ouanaminthe priest. "We helped put on the election, so after the coup we were pursued. Don't forget that we have wives and children, and we know nothing of what has happened to them. I personally have a wife and four children," he says.

However, in contrast to the other refugees, who came quietly into the DR, these men and women, who came to be known as the Dajabón 23, attracted international attention. When authorities discovered their presence, a 24-hour Army guard was mounted at the church. No one not connected with the parish could enter or leave. Representatives from rights groups Wings of Equality and the Good Samaritan Center, which helped ~~some~~ of the refugees cross, were allowed to enter the church but not to leave, and remained imprisoned until tensions subsided.

In mid-November, members of the New York-based Haiti Commission attempted to enter the church and were denied access. Later, however, a local lawyer negotiated with the guards and the Commission members filmed interviews with several refugees. According to their report, the refugees were living in a 12 x 24 meter church recreation room, and slept on foam-rubber mats. Food was donated by area residents and other parishes. At the time, Father Regino Martinez said that the priests were under tremendous pressure from the Army for harboring refugees.

The refugees remained shut in the church for two months. When the UNHCR representatives arrived on January 7, they say they found an impasse between the authorities and the church. Fifteen of the original 23 asked to be returned to Haiti rather than remain under arrest in the DR. The Good Samaritan Center, which remains in contact with them, says all 15 are now in hiding again. The remaining eight were taken by UNHCR to a Christian Reformed Church in the capital on February 14, where they remained under guard until March 15. Along with the Villa los Almácigos men, they are the group now living in Haina.

TREATMENT IN THE DOMINICAN REPUBLIC

Several Dominican groups have made brave efforts to help Haitian refugees. For instance, in October, priests from the Diocese of Barahona, a leading sugar-producing area, published a letter condemning violent acts by the coup leaders, urging a return to democracy and calling on the Dominican government to respect the right of asylum for political refugees. The priests also pledged to help refugees as they arrived in the DR. Catholic churches in Dajabón and Villa Los Almácigos gave refuge to Haitians fleeing repression, often despite threats from the military and police. The Episcopal Church has sheltered 11 refugees for more than three months. The Good Samaritan Center currently houses three refugees from Cerca Carvajal.

In talking about their treatment, refugees center criticism on the Dominican government and the UNHCR. In particular, they claim the UNHCR has been slow to respond to their cases and is unequipped to provide them with basic necessities. A key complaint is that the Center for Social Work (CTS), a Dominican NGO contracted to administer UNHCR aid and negotiate with the Dominican government on the refugees' behalf, employs no Creole or French-speaking personnel.

While refugees praise UNHCR for bringing them to Santo Domingo and providing them with meals, they have not received clothing or other necessities, like toothpaste, soap or sanitary napkins. Ironically, Haitians feel cut off from events in Haiti than if they were in the United States, where they would be able to read newspa-

pers published in Creole and listen to the radio.

"For the last five months, I have had no word from my wife and children," says P. "Here, there is no news, not even a radio or television. Look at our clothes! I have only two pairs of pants, one that I used to escape Haiti. What I have is really a rag!"

Refugees at the San Andrés Episcopal Church also complain that they have seen Haitian police and former *Tonton Macoutes* near the church. "There are many police around the Church," T. says. "At times, I am afraid to go out. I have nothing. Everyone here is waiting for legal status, the official paper, the ID. I am living here now in quasi-misery."

B's anger is directed at the international organizations like the UN that supported elections in Haiti, but, according to him, have not come to terms with the consequences:

They don't treat us as refugees. They think we are all economic refugees.... This is what hurts—that it was the United Nations and the Organization of American States that organized elections in Haiti, and now, after the coup, we see that a branch of the UN, the UNHCR, treats us in this shameful way. We have been here five months, and the only thing they give us is food. How can one person live with just two shirts and two pairs of pants? They don't respect our status as professionals—a lawyer, a journalist, professionals. A political fight brought us here.

The eight refugees from Dajabón and three from Los Almácigos experienced special difficulties in the DR, because their group became the catalyst for a confrontation between the Dominican Army and rights groups. The refugees at the Christian Reformed Church in Santo Domingo provided only with beds—no chairs or tables to sit at. M. describes their situation:

It's not very good for us here. They give us the minimum, so that we don't die. But we don't have basic necessities, like toothpaste; and there's no way to get them. When you arrived, you saw us there on the rocks. That's because we don't even have seats. We have no spare clothes! We had to

leave our homes quickly, so couldn't pack and carry things. But even the UNHCR hasn't given us clothes!

T___ adds: "Since we left Haiti, we have been in jail, until today. In Dajabón, we couldn't even see the street."

J___ says they were better off with Father Ramoncito. "We don't even have chairs, and our pants are finished. We can't leave, or do anything. We just sit here all day long."

"If we had known we would end up like this, without clothes or shoes or basic necessities," says W___, "we would at least have brought some clothes. But because we left our houses running, we couldn't. We have told the UNHCR that we don't have seats, or toothpaste, but they say they didn't know, and it's not their responsibility."

The only refugees to have a marginally better living situation are the three young men in the Good Samaritan Center. All three had already visited the DR, and knew of the center. When G___, 30, a high school director involved in the Cerca Carvajal dispute, had to flee, he knew how to get from the border to the center house in Santo Domingo:

If I had to categorize my situation on a scale of one to 10, I would say zero. The UNHCR is the worst. My good fortune is to have come here before and know the Good Samaritan Center. If not, things would have been black indeed for me. The UNHCR has delayed a long time getting us official status. We went to their office for our interviews on October 29, and still (March 15) we have only a UNHCR letter saying we have applied for political asylum. They gave us a little help with food. But if the problems in Haiti were solved this instant, this instant I would return home. I never intended to live here... So far, I've received only one letter from my family.

The UNHCR representative for the DR also covers Haiti, and spends most of his time there. Thus, CTS does the bulk of work in the DR. The Center has had several staff changes since the coup. Its current director, Dr. José Mieses, says he is only the interim director until a new director is hired. Four staff members work on refugee cases. Currently, they receive 65

applications for refugee status per month, of which they judge 10 percent to be considered convincing. The Center is new to refugee work. As mentioned above, it has no Creole-speaking personnel.

Despite having approved over 50 applications for refugee status, UNHCR has presented only 11 cases to the government's National Commission for Refugees, made up of representatives from military intelligence, immigration and the vice-premier's office. "We pressured a lot, and finally got them to issue the temporary cards on February 13," Dr. Mieses says.

Dr. Mieses emphasizes the delicate nature of the job, especially given the 1991 Haitian repatriation and the Dominicans' long-standing fear of being overwhelmed by Haitian refugees. "The situation is especially delicate with the United States repatriating Haitians from Guantánamo," he points out. "The Dominican authorities have told me that as long as the U.S. is repatriating, the DR has no intention to accept large numbers of refugees. We want to go slowly, so not to risk a rejection."

Although groups that work with the Haitians say that UNHCR has done a good job tracking down and interviewing potential refugees, UNHCR is criticized for not doing enough to support the refugees once they are brought to Santo Domingo to await a decision. Despite the fact that the UNHCR called a meeting with Dominican groups that work with Haitians immediately after the coup, to prepare for a possible flood of refugees, the agency is having trouble dealing with the small group it has so far recognized.

"Last week we sent a FAX to Caracas and Geneva saying that despite the fact that we have only 30 refugees in Santo Domingo, the UNHCR is having economic difficulty," points out Father Parolson, whose Pastoral Haitiana supports 11 refugees. "The local UNHCR office owes the Episcopal Church 15,000 pesos (\$1,210.00), the Reformed Church 12,000 pesos (\$970.00), and to me personally, my family budget 800 pesos (\$65.00). We are now supplying 11 refugees with lodging. We want the UNHCR to take care of its responsibilities. We can't use funds that we have decided should go to other church activities as long as the UNHCR has money."

While Dr. Mieses acknowledges the debts, he adds that it has also been difficult to get groups to

CHRONOLOGY

- December 5, 1492 Christopher Columbus arrives at an island he calls "La Española," now Hispaniola.
- 1655-1697 and 1697-1777 France occupies the western third of Hispaniola.
- 1804 Haiti, led by General Jean-Jacques Dessalines, declares its independence.
- 1821 First Dominican Independence, later called the "Ephemeral Independence."
- 1822-1844 Occupation of the DR by Haiti.
- 1844 The DR declares its independence, which it fights for until 1849.
- 1915-1934 Occupation of Haiti by the U.S.
- 1916-1924 Occupation of the DR by the U.S.
- 1937 "El Corte," The Cutting, the murder of between 15-20,000 Haitian refugees by the Dominican military.
- June 13, 1991 Executive decree which begins forced repatriations of Haitians from the DR.
- September 29 Coup d'état that forces President Jean-Bertrand Aristide into exile.
- September 30 First refugees begin to go into hiding.
- November 1 Sugar harvest begins.
- November 5 Refugees arrive at Dajabón church, where they stay until Feb. 14.
- November 9 Dominican President Joaquín Balaguer agrees to maintain the country's border open to potential refugees and allow the UNHCR to screen entering Haitians.
- November 14-19 Haiti Commission visit, and first interviews with Dajabón refugees.
- December 15 Refugees arrive at Villa Los Almácigos, where they stay until Feb. 14.
- February 14 Formal closing of Radio Enriquillo's Creole news broadcast; they begin to sing the news.
- March 13 Dominican government gives temporary residence cards to 11 refugees from Dajabón and Villa los Almácigos incident.
- March 15 End of police and military surveillance of 11 political refugees left from Dajabón and Villa los Almácigos incident; they are eventually moved to Haina.

commit to helping. For instance, when he brought the remaining eight refugees from Dajabón to the Christian Reformed Church ■ arranged on a Friday afternoon, he found the doors locked, the rooms unprepared and no one willing to get the key. Temporary lodging had to be found until Monday morning. Although the resident pastor opposed having the Haitians there, he was finally obligated to open the doors. Nevertheless, he denied them chairs and tables, and even the chance to view, through an open window, the nightly news broadcast.

"We are paying 160 pesos (\$13) per person per day and providing them with food," Dr. Miseses says, exasperated. "Can't the church get some donated clothes? Can't they lend them chairs? Sure, we do owe money, but it will be paid. In the meantime, these groups agreed to help house the Haitians until more permanent places could be found."

Perhaps the best characterization of UNHCR treatment of Haitian refugees in the DR is "improvised". This is despite precautions taken immediately after the coup, when the UNHCR sponsored meetings to design an emergency response plan.

However, any humanitarian activities in the DR are clouded by the shadow cast by the U.S. policy of forcibly returning Haitians. As long as the U.S. government summarily returns Haitians, the international community must be aware that the Dominicans would need little or no pretext to summarily return Haitians, as well. The Dominican authorities could interpret U.S. forced repatriations with no screening as giving them the "green light" to do the same. Would the United States be in a position to protest if they did?

CONCLUSIONS

A history of conflict and suspicion has made the DR an inhospitable place for Haitians. Recent events have only exacerbated tensions. For most Haitians, the prospect of spending time in the DR conjures up images of abuse, slave labor, and insecurity. Although geographically close, the countries are separated by wide gulfs of culture, language, and race.

Nevertheless, thousands of Haitians fled to the DR after the September coup. Many go uncounted, hidden among the thousands who work the cane harvest. The relative few who have formally applied for refugee status can be linked by several shared characteristics, like living near the border and working in church and pro-Aristide political groups. Unfortunately, what also binds them is continuing uncertainty about their legal status and unnecessary hardship. In the DR, they are seen as unwelcome harbingers of a feared invasion of a poor, black, and politically active population.

Clearly, the DR like all nations has a right to control its borders. However, the Dominican government is playing a double game. On the one hand, state-operated and private sugar cane companies import Haitian labor, usually poor people who fall easy prey to abuse. At the same time, the government has shown itself to be unwilling to accept political refugees, arguing that doing so would encourage thousands more to ask for asylum. This is how former cane cutter N. ___ puts it:

The way they treat Haitians on the border is very bad. [The Dominicans] are interested in showing people two things at the same time. First, there is the interest in having people come to work in the cutting of cane. Nevertheless, on the other side, there is the interest in not making it seem like many Haitians can come, to keep them out of regular life.

Clearly, the DR is not alone in fearing a massive influx of Haitian refugees. For them, the model is the current U.S. policy of sending Haitians back without determining first whether they are refugees. As Dr. Mises, the UNHCR

representative, points out, as long as the U.S. continues to summarily return Haitians, few other countries, especially if they are as geographically vulnerable as the DR, will welcome them with open arms. However, pressuring the Dominican government has its risks. No one wants to see even these narrow doors slam shut.

The Bush Administration often uses the low numbers of Haitian refugees in the DR in support of its return policy. According to Robert S. Gelbard, Principal Deputy Assistant Secretary of State for Inter-American Affairs, the DR agreed on November 8 to maintain the Dominican border open to refugees, and to allow UNHCR officials to screen entering Haitians for refugee status. Few refugees showed up in the "screening system," according to the U.S. Therefore, the DR became a prop supporting Gelbard's assertion that "increased outflows (of Haitians) tend to coincide with periods of economic difficulty rather than any particular political factor."

Not only has no such "screening system" been set up; not even the Army general responsible for the DR's northern border was aware of such an agreement. On the day President Balaguer made this agreement, the Dajabón Catholic Church was surrounded by soldiers sent to arrest the 23 Haitians who had taken refuge there. Less than a month later, soldiers surrounded the Catholic Church at Villa los Almácigos. Haitian refugees were treated as political prisoners. Worse, as Father Ramoncito suggested, there was fear for their lives if remanded to Army custody. In May, when U.S. officials asked the Dominicans to establish a border camp for between 10,000 and 15,000 Haitians, they refused outright.

The U.S. argument clearly fails to take into account not only the lack of asylum procedure in the Dominican Republic, but also how Haitians have been treated in the DR. It fails to look beyond printed promises to actual events. This report has attempted to clarify why the DR is considered inhospitable to Haitians, and the poor reception refugees have received so far.

RECOMMENDATIONS

Given this situation, USCR recommends the following:

1. **Protection against refoulement, the forced return of refugees, including expulsion at the frontier, must be scrupulously observed by the Dominican government, as it agreed to do when it acceded to the 1961 Refugee Convention.** Dominican border authorities, including the Army, should be advised to grant entry to Haitians claiming to flee persecution. Haitians should be informed of their right to petition for asylum. The international community must make every effort to ensure that the Dominican Republic respects the principle of first asylum, that refugees fleeing violence and persecution, including in mass exoduses, need to be given temporary refuge until such time as a durable solution can be found on their behalf. The international community must also visibly monitor against forced repatriation of the large number of Haitians already residing in the DR. This is especially crucial in the months of June and July, as the harvest concludes and Haitians are in greatest danger of being forced back into Haiti until the harvest begins again in November.

2. **Haitians now seeking refuge in the DR should be made a higher priority by UNHCR officials on the ground.** A fully trained UNHCR protection officer should also be stationed in the DR during this crisis period. It is unrealistic to expect a protection officer stationed in Port-au-Prince to be responsible for the DR as well. Additionally, the UNHCR/Center for Social Work office should employ at least two Creole-speaking representatives able to go to *bateyes* to conduct a survey to verify that no political refugees are being subjected to forced labor or otherwise exploited due to their vulnerability as refugees. Recognizing the obvious difficulties involved with negotiating with the Dominican government regarding asylum seekers, it must still be said that the UNHCR/CTS operation, despite well-intentioned efforts, has, thus far, been a failure.

3. **The Dominican government should begin immediately to adjudicate individual**

petitions of asylum seekers and, where appropriate, grant refugee status. Recognized refugees should be granted asylum and provided with the documents that prove legal residency and work authorization in the DR. Asylum seekers and displaced persons whose cases have not been individually adjudicated should not be returned until their safety in Haiti can be assured. Such persons should be treated with dignity, and the international community must assist the DR in their care. This means an immediate increase in material aid: food, clothing, medicine, decent housing, and a means to communicate with their families. All Haitians in the DR must also be protected from threats and/or assaults from representatives of the Haitian military government in the DR, as well as paramilitary groups linked to the Haitian regime.

The denial of the fundamental principle of first asylum on the part of the United States...sends a message to the DR...that it is permissible to return them to conditions of danger, and possibly death.

4. **USCR urges President George Bush to reverse his May 24 Executive Order on the summary return of Haitian boat people.** The denial of the fundamental principle of first asylum on the part of the United States, and—in the absence of screening procedures to determine credible asylum claims—the likelihood that the U.S. is violating international law by engaging in *refoulement*, cannot be lost on the DR authorities. It sends a message to the DR—and for that matter to all other countries with refugees on their doorsteps—that it is permissible to return them to conditions of danger, and possibly death. Without reversing its policy, the United States not only itself condemns boat refugees to an uncertain fate, but jeopardizes the safety of refugees fleeing to the Dominican Republic and all other countries now and for years to come.

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APPENDIX 3



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STATEMENT OF

**HERBERT W. CHILSTROM, BISHOP
EVANGELICAL LUTHERAN CHURCH IN AMERICA**

TO THE

**U.S HOUSE REPRESENTATIVES
FOREIGN AFFAIRS COMMITTEE**

**JOINT HEARING ON HAITIAN REFUGEES
SUBCOMMITTEE ON ~~WESTERN~~ HEMISPHERE AFFAIRS
AND
SUBCOMMITTEE ON INTERNATIONAL OPERATIONS**

JUNE 11, 1992

The United States government has abandoned a long-held principle of refugee protection and the right to asylum by forcibly repatriating Haitian boat people. The suffering of thousands of desperate Haitian boat people fleeing worsening unrest and unfavorable political conditions in their homeland confronts us all, and I am deeply disturbed by this lack of compassion towards refugees fleeing Haiti.

The new Executive Order on Haitian interdiction issued May 24 has left me dismayed. The best traditions of America have welcomed the stranger and offered a safe haven to the persecuted. It is a sad reminder that only fifty three years ago our nation refused to help nearly 1,000 German Jewish boat people, forcing them back to the gas chambers of Nazi Germany. The ship St. Louis, carrying refugees fleeing persecution, anti-semitism and the widening chaos of pre-war Germany, was denied a safe haven by the United States and other countries in the region. We must not let this happen again.

To abandon the tradition of offering a safe haven to the world's persecuted seems particularly harsh in light of the worsening conditions in Haiti. The Evangelical Lutheran Church in America shares concern for the safety of Haitians who risk their lives in unseaworthy vessels, but I deplore this new policy of interception and forced return. Our congregations, pastors and members have actively assisted hundreds of thousands of refugees to start new lives in the United States. Through Lutheran Immigration and Refugee Service, Lutherans and people of good will have rescued many

lives, and this provides testimony that Americans care about the plight of the persecuted and homeless refugees around the world.

Why is it that the United States cannot offer similar protection to Haitians fleeing individual persecution and the widening maelstrom of anarchical violence in their country? The current policy of the United States government is not only unfair but contradictory. While the United States returns Haitians back to persecution, we also try to persuade other countries in the region to provide safe haven for the boat people. The Evangelical Lutheran Church in America urges that Haitian boat people must be accorded a full opportunity to pursue protection or temporary asylum claims outside Haiti. This new policy of unwarranted and unconditional forced return of Haitians announced by the President on May 24, 1992, is wrong and must be changed.

To assert that Haitians can avail themselves for refugee processing at the U.S. embassy in Port-au-Prince is disingenuous. Because of the distance and insecurity, people who live in the countryside cannot easily travel to the embassy for processing. Furthermore, staff at the embassy are more prone to political and foreign policy pressures, and do not have the institutional independence of the Immigration and Naturalization Service asylum officer corps. These asylum officers should be commended for maintaining integrity in the screening process that has been operational in Guantanamo Naval Base up until the change of policy two weeks ago.

This new policy by the Administration also runs counter to international law. The United States is a signatory to international treaties that forbid governments from rejecting, expelling or summarily returning refugees to their homelands. Our government

has repeatedly urged other countries to respect standards of international law, and for many years the United States has consistently pressured other governments to abide by the international refugee protection agreements. The United States has actively promoted the principle of "first asylum," that refugees ought to be allowed to land and enter neighboring countries on a temporary basis until a long-term solution can be found. In particular, the Evangelical Lutheran Church in America and Lutheran Immigration and Refugee Service have stood by the United States government in its steadfast refusal to accede to forced repatriation of Vietnamese asylum seekers from Hong Kong.

This most recent action in the Haitian saga sets an unwelcome international precedent at a time of great uncertainty in many parts of the world. It is very likely that countries throughout Asia, Africa, Latin America and Europe will now point to the United States and follow our worst example.

Until peace and democracy are restored to Haiti, the plight of the most desperate people deserves a more generous response. Churches and volunteers across the United States are ready to help these refugees, as we have during past refugee crises.

Given that the administration now refuses to offer any safe haven to Haitian refugees, and the courts have also abandoned their plight, it is up to the United States Congress to act. I plead with members of Congress to move quickly; do not let this policy stand.

The Evangelical Lutheran Church in America urges Congress to enact legislation that would return the United States government to the accepted norms of international law. We support legislative efforts that clearly state that the principle of first asylum and

"non-refoulement" applies to all refugees, even if encountered outside the territory of the United States. Our nation cannot forcibly return refugees to their persecutors without first allowing them to make a case that they deserve protection.

The tragedy of Haitian boat people weighs heavily on the soul of America. Let's do the right thing and offer these refugees a helping hand.

Herbert W. Chilstrom, Bishop

Evangelical Lutheran Church in America

APPENDIX 3

TESTIMONY

of

The Rev. RICHARD J. RYSCAVAGE, S.J.

**Executive Director,
Migration and Refugee Services
U. S. Catholic Conference**

In Support of

**H. R. 5360
The International Refugee Policy Act of 1992**

Before the

**House Foreign Affairs Subcommittee
on International Operations**

June , 1992

The United States Catholic Conference (USCC) is the public policy arm of the Catholic Bishops of the United States. Within USGC, the office of Migration and Refugee Services (MRS) is responsible for carrying out the Bishops' policy on migration, immigration, refugees and political asylum. It is in this capacity that MRS/USCC offers written testimony in support of H.R. 5360, the International Refugee Protection Act of 1992. It is our understanding that the legislation is in direct response to the Administration's recent decision to return all Haitians encountered on the high seas or in the territorial waters of Haiti to their country without any effort to ascertain likely claims for asylum status. This new policy is clearly unacceptable in light of internationally approved humanitarian principles and the availability of alternative solutions.

Since the beginning of the refugee crisis initiated by the September 1991 overthrow of Haiti's democratically elected government, USCC/MRS has been actively involved in advocating humanitarian solutions to the Haitian refugee crisis; in assisting those Haitians screened-in by the government; and in attempting to reverse the policy of involuntary return screened-out Haitians to their homeland involuntarily. In the context of our experience with the Haitians over the past twelve years as well as our more recent involvement, it is clear that at the very least, Haitians fleeing from an oppressive political climate, exacerbated by economic crisis, should not be forcibly returned to Haiti if their lives would be threatened on account of political affiliation. We urge the Congress to pass legislation immediately preventing the forcible repatriation of Haitians without first making a determination of their status through fair and thorough proceedings. The nationals of any other country who are or may be refugees.

The Church's Interest in Human Migration

The Catholic Church in the United States has long been active in providing assistance to immigrants. MRS traces its roots back to the Church-related immigrant service agencies of the late 19th Century. The office that is now MRS was first formally constituted as a service of the Bishops in the 1920s, and is the oldest national service agency of the Catholic Church in the United States. This experience has provided the Church with an opportunity to act on principles first articulated in the Gospels of Christ and later explicated in Catholic social teaching.

For a century, Catholic social teaching has supported the protection of and respect for the individual's personal choice in the migration process. Beginning with *Rerum Novarum* in 1891, the Church has supported a number of basic principles including the dignity of labor, the right to private property. A corollary to these two precepts is the right to migrate to secure a means of livelihood. The Church has also been especially sensitive to those who flee from life-threatening situations, particularly if those situations stem from political oppression and persecution. This position was succinctly stated by Pope Paul VI:

Individuals and groups must be secure from arrest, torture and imprisonment for political or ideological reasons, and all in society, including migrant workers, must be guaranteed juridical protection of their personal, social, cultural and political rights. We condemn the abridgement of rights because of race. We advocate that nations and contesting groups seek reconciliation by halting persecution of others and by granting amnesty, marked by mercy and equity, to political prisoners and exiles.¹

Position on Haiti

Pope John Paul II explicitly stated his concern and interest in Haiti during his 1983 visit there. He observed

there is really a profound need of justice, of a better distribution of goods, of a more equitable

¹Pope Paul VI, Message of Pope Paul VI in Union with the Synod, 1974.

organization of society, with more participation, ■ more disinterested concept of service to all on the part of those who have responsibilities....[T]here should be the possibility to eat one's fill, to satisfy one's hunger, to be well kept, to have housing, schooling, victory over illiteracy, honest and dignified work, social security, respect for family responsibilities and for the basic rights of man: in a few words, everything which ensures that men and women, children and the aged can live truly human lives.²

It is with the aim of ensuring that Haitian nationals may live "a truly human life" that the Catholic Church in the U.S. has maintained ■ commitment to Haitian boat people.

USCC/MRS has long actively advocated on behalf of Haitian boat people and Haitians in the U.S. In 1982, testifying before the Senate Subcommittee on Immigration and Refugee Policy, then-Bishop (now Cardinal) Anthony J. Bevilacqua discussed the "unjustifiable incarceration"³ of Haitian asylum-seekers. Bishop Bevilacqua testified in 1984 before this subcommittee ■ the Cuban/Haitian Adjustment Act of 1984. In his testimony, he discussed "Haitian refugees [who] risked their lives to flee from misery and repression to this country." He cited ■ USCC letter to the subcommittee that pointed out

the plight of our Haitian brothers and sisters who have fled poverty and persecution, only to find imprisonment and deprivation upon arrival in this country....These good people are of special concern to the Church which has sought for so long to relieve their misery and to open the door to a life filled with hope rather than despair.⁴

More recently, on September 12, 1989 in testimony before this subcommittee, former MRS Executive Director Msgr. Nicholas A. DiMarzio pointed out that

At the same time that we are running this interdiction program, we are leading the international outcry against the Hong Kong government's intention to return Vietnamese boat arrivals to Vietnam. The US government's historic and continued inequitable

²Pope John Paul II, "Something Must Change Here," Homily presented at Duvalier Airport in Port-au-Prince, Haiti, March 9, 1983.

³Statement of Bishop Anthony Bevilacqua before hearings of the Senate Subcommittee on Immigration and Refugee Policy. April 1, 1982.

⁴Statement of the Most Reverend Anthony J. Bevilacqua before the Subcommittee on Immigration, Refugees and International Law, The Committee on the Judiciary, U.S. House of Representatives, May 9, 1984.

treatment of Haitians is indefensible.⁵

The events that have transpired in Haiti since that time have reinforced USCC/MRS opposition to the interdiction program and to the continued inequitable treatment of Haitian asylum-seekers.

Position on Forced Repatriation

The debate surrounding the issue of the forced repatriation of persons seeking refuge from the oppression of the governments of their countries of origin has consistently been a concern for the Catholic Bishops in the U.S. In the early 1980s when Cambodian refugees were being pushed back across the Thai border, the U.S. Bishops sent a delegation to Thailand to visit the camps and to attempt to address the immediate needs of the refugees.

When the Hong Kong government began to repatriate Vietnamese refugees forcibly early in this decade, Bernard Cardinal Law, Chairman of the U.S. Bishops' Committee on Migration visited Hong Kong and found that, "involuntary repatriation is unacceptable for Vietnamese asylum seekers."⁶ He went on to state that

To be able to live in peace and security is central to human dignity. The boat people have risked great danger and have shown the depth of their determination not to return to a land they fear. To force such people back can only become a deeper tragedy.... Any policy which would deliberately make the living conditions of asylum-seekers uncomfortable and harsh, limit the opportunities for refugee status through a narrow screening process and present the specter of forced return to Vietnam to deter future refugees must be considered indefensible. To

⁵Testimony of Reverend Monsignor Nicholas DiMarzio, Executive Director, Migration and Refugee Services on behalf of United States Catholic Conference in re: Refugee Admissions numbers for FY1990, House of Representatives Subcommittee on Immigration, Refugees and International Law, September 12, 1989.

⁶"First Asylum in Southeast Asia: Concerns and Recommendations," Statement of Bernard Cardinal Law, Chairman of the National Conference of Catholic Bishops' Committee on Migration, August 1990, p. 4.

people in this way would violate their human dignity.⁷

The Church's opposition to forced repatriation in general and to policies abridging the human rights of Haitian asylum seekers has been frequently articulated during the crisis of the past ten months. In a November 20, 1991 letter, Archbishop Daniel Pilarczyk, President of the National Conference of Catholic Bishops urged President Bush to "authorize a more humane and flexible application of our immigration laws, to continue pressing other regional governments to provide safe haven for more of these refugees, and to halt the repatriation of interdicted Haitians."

With the Administration's recent Executive Order directing the Coast Guard to return Haitian boat people directly to Haiti without attempting to determine whether they have a credible asylum claim, MRS' position, as enunciated by Emma D. Navajas, J.D., Director of Immigration, remains salient. Ms. Navajas said:

It is simply unacceptable that many Haitians are not allowed to benefit from the protection offered under U.S. law. The fact that Haitians are knocking on our door for help compels this country to follow and enforce the guidelines enacted by the Refugee Act of 1980, which requires a case-by-case determination of refugee eligibility.⁸

In a May 22, 1992 letter to the President regarding the Executive Order, Cardinal Law wrote,

I urgently plead with you on pressing humanitarian grounds...to cut through the legal and political gordian knot and make provision for persons fleeing Haiti to be received aboard U.S. vessels and brought to a processing center either in this country or in some Caribbean country. The sad memory of Jews being refused entry before World War II should teach us that never again should we turn our back on a human being pleading for our help and hospitality.⁹

⁷Ibid, p.5.

⁸"MRS/USCC Calls for Cessation of Forced Repatriation for Haitians," Statement from the Office of Migration and Refugee Services of the United States Catholic Conference, November 20, 1991.

⁹Letter to President George Bush from Bernard Cardinal Law, May 22, 1992.

It is clear, then, that given the advocacy efforts by the Bishops and MRS/USCC on behalf of Haitians fleeing successive repressive regimes and a longstanding opposition to forced repatriation of refugees, the legislation under consideration, the International Refugee Protection Act of 1992, is an important declaration that the United States must conform to the humanitarian norms of customary international law.

Practical Experience

The Church also relies heavily on its experience with the human condition to inform its policies. MRS/USCC is one of the two voluntary agencies which have continuously been involved in resettling Cubans and Haitians who either make it to the U.S. or are rescued at sea and brought here. MRS has participated in this program since 1980 and it is under a contract with the Community Relations Service (CRS) of the Department of Justice that Haitians who have been screened in from Guantanamo during the current crisis are being resettled.

Since 1980, most Haitians accepted for resettlement are those who have managed to land in the U.S. For the past ten years the government has maintained that the vast majority of Haitian boat people are simply economic migrants: individuals who, were it not for Haiti's desperate economy, would have no other impetus to leave. Between September 1981 and September 1989, more than 20,000 Haitians were returned to Haiti under the interdiction program. Only six were deemed by INS officials during the cursory interviews they received at sea to have asylum claims meriting transfer to the U.S.

In November 1991, following the overthrow of President Aristide, the situation changed substantially. Between November 1991 and June 10, 1992, 37,000 Haitians were interdicted by the Coast Guard outside of U.S. territorial waters. Of that number, 10,494 were deemed to

have potentially plausible claims for political asylum and were screened in. As of June 9, 8,209 Haitians had been brought to the U.S. and MRS has resettled 4,241.

The change in the Administration's policy can be attributed to at least a tacit recognition that things have changed drastically in Haiti. The overthrow of the country's first democratically elected government, the widespread civil disorder and violence that prompted the Administration to recall U.S. personnel and the effects of the economic embargo have all been obvious facets of the ~~new~~ situation. It is also at least partly rooted in the fact that this group of Haitians has had the benefit of being screened by a specially trained corps of asylum officers who operate as independent adjudicators. Throughout this crisis, the Asylum Corps has worked hard to maintain credibility and adjudicate cases fairly. This is true even though it has carried out this exemplary work in very stressful conditions in Guantanamo and has faced intense pressure from administration forces opposed to its results.

The universal nature of the Catholic Church provides us with a network that ~~can~~ be used to assist in bringing relief to Haitians still in their country of origin. In addition, our experience in working with the screened-in population has shown ~~us~~ that there are substantial though relatively simple procedural changes that could be made which would enable the Administration to handle the population ~~more~~ effectively.

RECOMMENDATIONS

While the return of the Haitians to Haiti without hearings of their asylum cases, and ~~now~~ without ~~any~~ screenings to determine whether they have a credible fear of return, solves the U.S. government's short-term problem, its effect has been to sacrifice principle for expedience. This is particularly egregious in light of the fact that there ~~are~~ several alternatives to resolve the

plight of Haitian asylum-seekers that ~~are~~ much more appropriate. These alternatives are outlined below.

Dramatically Expand Refugee Processing in Haiti

USCC/MRS has long advocated in-country refugee processing for Haiti. While we recognize that special circumstances now exist there, that in-country processing without adjustment for these special circumstances would be inadequate, and that such a program by itself would not constitute the sole solution to the current refugee crisis, we do believe that a carefully structured in-country refugee processing program could help alleviate the flow of refugees from this strife-torn country.

Accordingly, the Catholic Church's network is prepared to send staff to Haiti to help the government locate and interview potential refugee applicants, not only in Port-au-Prince, but especially in the countryside. We would urge the United States government to rapidly expand its processing capacity in Haiti and to be more generous in reviewing the cases presented. The United States High Commissioner for Refugees could be asked to assist in the monitoring and protection of returnees.

A Transitional Reintegration Assistance Center could be established within Haiti to serve as a temporary economic safe zone to provide assistance to individuals who do not qualify as refugees and to help them reintegrate into Haitian society. The UNHCR (with the help other non-governmental organizations) would be able to staff and manage such a facility as it does in Sri Lanka, Vietnam, the Philippines and Indonesia.

Establish Temporary Holding Centers

At the very least, we encourage the Administration to rescind the ~~new~~ Executive Order

and temporarily house the Haitians at Guantanamo. If the Administration will not consider this option, then the government should continue to pursue other sites in the region. Such a center could be internationally managed and offer refugee processing. This would provide a humanitarian response to the crisis, while answering the Administration's concern that processing in Guantanamo has prompted more Haitians to leave by boat.

Establish a Special Entrant Status for Haitians

Since the Administration has been reluctant to invoke Section 302 of the Immigration Act of 1990, allowing the Attorney General to designate a nationality eligible for "Temporary Protected Status," (TPS) or temporary safe haven, the most practical alternative short-term solution would be to screen in Haitians in the U.S. and grant those on a special temporary entrant status similar to the status given to the Mariel Cubans and Haitians in 1980. Such a move would save the government an enormous amount of money and would eliminate the current burdensome asylum requirements. The government already has a backlog of more than 200,000 other asylum cases waiting to be heard. The current asylum requirements for pre-screened Haitians are worsening backlog.

Moreover, the Church has responded with a system to provide legal services for the Haitians resettled under USCC sponsorship. Our ability to continue this service depends on the generosity of future donors and the availability of volunteer attorneys able to donate large blocs of time for this labor intensive legal process. A new temporary entrant status would obviate the need for this complex array of services.

We are particularly concerned about the 200 screened-in unaccompanied minors being kept in Guantanamo. We urge the government to bring them to the United States within the next

three weeks. USCC/MRS and the Lutheran Immigration and Refugee Services are committed to the joint resettlement of these Haitian minors with the assistance of our foster care networks.

Another great concern of ours centers on the Haitians on Guantanamo who have been diagnosed HIV-positive. They are kept in an isolated section of the naval base and are subject to more rigorous refugee processing than is the general population. They are also prohibited from communicating with their friends and families in Haiti or elsewhere. We urge the United States government to allow the immediate provision of medical, legal, and pastoral counselling.

Congressional Action

Finally, we would like to commend the authors of H.R. 5360, introduced by Representatives Solarz, Berman, Lewis, Morella, Rangel, Hamilton and Gilman in the House of Representatives and Senators Kennedy and Hatfield in the Senate. We strongly support this legislation, which would prevent U.S. officials from returning Haitian boat people without first determining that they would not face persecution upon return. We note that this legislation would bring U.S. practices into conformity with international law by ensuring that no person will be returned to Haiti, or to any other country, if he or she legitimately fears death, imprisonment, torture, or other terrible treatment due to his or her race, religion, nationality, membership in a particular social group or political opinion. We urge Congress to swiftly approve this legislation. And we encourage the President to promptly sign it into law.

The ultimate solution to the refugee crisis in Haiti is a restoration of democracy. To that end, USCC urges the United States to accelerate its bilateral and multilateral efforts to reach a settlement on this important question. Until such a conclusion is reached, we urge the Administration to act in the spirit with which the United States has traditionally welcomed

refugees and establish ■ special temporary entrant status for Haitians, establish temporary holding centers for Haitians encountered on the high seas; and dramatically expand and make more fair refugee processing in Haiti. We urge Congress to move swiftly to enact legislation reaffirming and mandating United States compliance with the spirit and letter of our treaty obligations with regard to refugees.

We, at USCC, stand ready to help the United States Government solve this crisis in any way possible.

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